



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget

525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **3**

to

Contract Number **071B7700058**

CONTRACTOR	Jpay Inc.
	12864 Biscayne Blvd
	Miami, FL 33181-2007
	Jessica Lust
	954-862-6921
	jlust@jpay.com
	*****6761

STATE	Program Manager	Kevin Weissenborn	MDOC
		517-373-9550	
		Weissenbornk@Michigan.gov	
	Contract Administrator	Sarah Walter	DTMB
		(517) 284-7024	
		walters6@michigan.gov	

CONTRACT SUMMARY				
ELECTRONIC PRISONER SERVICES - MDOC				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
February 1, 2017	October 31, 2020	5 - 1 Year	October 31, 2020	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	N/A
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$5,184,376.20	\$17,515,000.00	\$22,699,376.20		
DESCRIPTION				
Effective January 23, 2018 please note the following changes:				
<ul style="list-style-type: none"> This contract is hereby increased by \$17,515,000.00, with funds being placed in the electronic Prisoner Benefit Fund (PBF). The following language in Section 1.011 Project Request, or Article 1 – is hereby revised: Although the contract effective date is February 1, 2017, the Contractor will not be assessed service level agreements until after October 1, 2017 (except vendor catalog service level agreements). The Contractor must introduce vendor catalog ordering through their kiosks to all facilities no later than October 31, 2018. 				

- The following table in **Section 1.041 Project Plan Management – Transition plan is hereby revised:**

	Start	Completion
Implementation of Vendor Catalogs	1/8/2018	11/1/2018
Development and QA – Kiosk, files, Accounting	1/8/2018	9/30/2018
Formulate vendor requirements and file specifications	3/12/2018	4/13/2018
Vendors provide files, pictures, etc.. to spec.	4/2/2018	5/31/2018
Testing vendor submitted files and content	6/4/2018	6/29/2018
Confirm pilot details for Chippewa & Cotton Sites	6/4/2018	6/29/2018
Activate 1 Vendor (Mike's Better Shoes) at Pilots (Chippewa & Cotton)	7/2/2018	7/2/2018
Monitor Pilot Locations	7/3/2018	8/3/2018
Development and QA for any items identified in Pilot	8/6/2018	10/1/2018
Activate Mike's Better Shoes purchasing (all facilities)	10/1/2018	10/5/2018
Repeat activation process with remaining catalog vendors	11/1/2018	11/1/2018

- The following language in **Section 2.001 Contract Terms, or Article 2 – is hereby revised:** The Contractor must introduce vendor catalog ordering through their kiosks no later than October 31, 2018. The State will not begin to assess service level agreements on vendor catalog capabilities until after October 31, 2018.
- The following language is hereby added to **Attachment D – Service Level Agreements:**
Service Level Agreement – Customer Service
Definition and Purpose – The Contractor must maintain a customer service department that is available 24/7/365 to answer facility questions regarding prisoner orders, address kiosk issues, and provide other customer services in accordance with the Contract as needed or requested by MDOC staff. Equipment and system issues will be repaired within time frames outlined in the Contract. The Contractor must respond to all correspondence according to the terms of this Contract.
- Indicators/Methodology/Acceptable Standard**
Indicators
 - 1) Service Compliance Reports
 - 2) Equipment Repair Reports
 - 3) Prisoner Correspondence Logs
- Methodology**
 - 1) Monthly review of the Service Compliance reports related to issue resolution occurs according to the time frames in the contract related to call back and customer service availability during business hours.
 - 2) Monthly review of the Equipment Repair Reports to ensure equipment (including kiosk) repairs, software and system issues are resolved according to the timeframes in the contract.
 - 3) Prisoner Correspondence logs will be reviewed to ensure prisoners receive correspondence responses within the time frames outlined in the Contract.
 - 4) Regarding the 10% monthly threshold of kiosk outages: the methodology will include a daily count of all kiosks that are documented as out of service. This number will be tallied for the month and will be divided by the total number of kiosk days (number of kiosks multiplied by the number of days in the month). If the percentage is greater than 10% a credit will be assessed as detailed below.
- Acceptance Standard**
The Contractor must ensure customer service is provided according to the terms of the contract.
- Amount for Failing to Meet the Standard**
A penalty of \$500.00 will be assessed for each full day (24-hour period) any software related kiosk issue is not repaired within 48 hours of notification unless an alternative method for kiosk usage is approved by the Program Manager(s). A penalty of \$500.00 will be assessed for each full day (24-hour period) any kiosk hardware is not repaired or replaced within five business days of initial notification unless an alternative method for kiosk usage is approved by the Program Manager(s). There will also be a single penalty of \$5,000.00 if the monthly number of kiosk breakdowns exceeds 10%.
A penalty of \$500.00 will be assessed for each full day (24-hour period) any other equipment and/or system issues (other than kiosks) are not repaired within two business days of notification by the MDOC unless an alternative resolution is approved by the Program Manager(s). The allowed repair time will extend to five business days if replacement of the software or equipment (other than kiosks) is necessary and is documented and communicated to the MDOC.
A maximum penalty of \$100.00 will be assessed for each month that the correspondence report shows a prisoner correspondence item did not receive a response within the time frames defined in the contract. An additional maximum penalty of \$500.00 will be assessed for each additional month an identified prisoner correspondence item continues to not receive a response after the first penalty had been assessed.

All other terms, conditions specifications, and pricing remain the same. Per contractor and agency agreement, DTMB Procurement approval, and State Administrative Board Approval on January 23, 2018.

**STATE OF MICHIGAN
ENTERPRISE PROCUREMENT**

Department of Technology, Management, and Budget

525 W. ALLEGAN ST., LANSING, MICHIGAN 48913

P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICEChange Notice Number **2**

to

Contract Number **071B7700058**

CONTRACTOR	Jpay Inc.
	12864 Biscayne Blvd
	Miami, FL 33181-2007
	Jessica Lust
	954-862-6921
	jlust@jpay.com
	*****6761

STATE	Program Manager	Kevin Weissenborn	MDOC
		517-373-9550	
		Weissenbornk@Michigan.gov	
	Contract Administrator	Sarah Walter	DTMB
		(517) 248-7024	
		walters6@michigan.gov	

CONTRACT SUMMARY				
ELECTRONIC PRISONER SERVICES - MDOC				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
February 1, 2017	October 31, 2020	5 - 1 Year	October 31, 2020	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card		<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	N/A
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$5,184,376.20	\$485,000.00	\$5,669,376.20		
DESCRIPTION				
Effective January 4, 2018 please not that this contract is hereby increase by \$485,000, with funds being placed in the electronic Prisoner Benefit Fund (PBF).				
All other terms conditions, specifications, and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.				



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget

525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number 1

to

Contract Number 071B7700058

CONTRACTOR	Jpay Inc.
	12864 Biscayne Blvd
	Miami, FL 33181-2007
	Jessica Lust
	954-862-6921
	jlust@jpay.com
	*****6761

STATE	Program Manager	Kevin Weissenborn	MDOC
		517-373-9550	
		Weissenbornk@Michigan.gov	
	Contract Administrator	Sarah Walter	DTMB
		(517) 284-7024	
		walters6@michigan.gov	

CONTRACT SUMMARY				
ELECTRONIC PRISONER SERVICES - MDOC				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
February 1, 2017	October 31, 2020	5 - 1 Year	October 31, 2020	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	October 31, 2020
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$5,184,376.20	\$0.00	\$5,184,376.20		
DESCRIPTION				
Effective October 9, 2017, the following language is added to Section 2.242 or Article 2, Terms and Conditions:				
(e) Any Creditis assessed through service level agreements by the State will be deposited in the State's Prisoner Benefit Fund (PBF).				
Please note the Contract Administrator has been changed to Sarah Walter, phone: 517-284-7024, email: Walters6@michigan.gov, per Section 2.021 Issuing Office.				
All other terms, condntions, specifications and pricing remain th same. Per Contractor and agency agreement, and DTMB Procurement approval.				



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget

525 W. Allegan, Lansing, MI 48913

P.O. Box 30026 Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **071B7700058**.

between

THE STATE OF MICHIGAN

and

CONTRACTOR	JPay Inc.
	12864 Biscayne Blvd., Suite 243
	Miami, FL 33181-2007
	Jessica Lust
	954-862-6921
	Jlust@jpay.com
	6761

STATE	Program Manager	Kevin Weissenborn	MDOC
		517-373-9550	
		Weissenbornk@michigan.gov	
	Contract Administrator	Brandon Samuel	DTMB
		517-284-7025	
		Samuelb@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: Electronic Prisoner Services - MDOC			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
2/1/2017	10/31/2020	5 – 1 year options	
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45			
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
MISCELLANEOUS INFORMATION			
<p>The terms and conditions of this Contract are those of RFP 007115B003937. The Contract is for a period of three years, 9 months. The Contract will be effective February 1, 2017 through October 31, 2020. Although the contract effective date is February 1, 2017, the Contractor will not be assessed service level agreements until after October 31, 2017. This period of time will encompass services rendered / transition. February 1, 2017 the Contractor will start providing music download services, music players, and e-messaging services. The Contractor must introduce vendor catalog ordering through their kiosks no later than October 31, 2017. The MDOC reserves the right to revise the transition period.</p>			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$5,184,376.20

CONTRACT NO. 071B7700058

FOR THE CONTRACTOR:

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Name & Title

**Department of Technology, Management & Budget
Procurement**

Agency

Date



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Attachment A, Pricing

Attachment B, Michigan Department of Corrections Facilities Map

Attachment C, Michigan Department of Corrections Housing Units and Facility Population

Attachment D, Service Level Agreements

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Attachment F, Technical Requirements

Attachment G, PREA standards-Adult Prisons and Jails

Attachment H, Reserved

Attachment I, Vendor Handbook

Attachment J, Reserved

Attachment K, Reserved



DEFINITIONS

24x7x365 means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

Actual Services Contract Start means the performance of services solely by the Contractor under this Contract.

Additional Service means any Services within the scope of the Contract, but not specifically provided under any Statement of Work.

ADA means Americans with Disabilities Act.

Audit Period means the seven year period following Contractor's provision of any work under the Contract.

Booking system means the method of collecting and accounting for cash or debit card funds when a prisoner/parolee or detainee is received in to the system. The booking system collects funds from the detained individual and either allows deposit to MDOC prisoner accounts or holds in a separate account until the parolee or detainee is paroled or discharged from custody.

Business Day means any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00am Eastern through 5:00pm Eastern unless otherwise stated.

Blanket Purchase Order is an alternate term for Contract and is used in the Plan Sponsors' computer system.

CARF means Commission on Accreditation of Rehabilitation Facilities.

CCI means Contract Compliance Inspector.

Correctional facilities means a correctional prison.

Days means calendar days unless otherwise specified.

Deliverable means physical goods and/or services required or identified in a Statement of Work.

DTMB means the Michigan Department of Technology Management and Budget.

Electronic stamp means the cost of allowing the prisoner or family member to send one electronic message (example: 5 messages for \$1.00 or one message = \$0.20). The electronic stamp is non-taxable.

Environmentally Preferable Products means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to: those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

Hazardous Material means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

ICHAT means Internet Criminal History Access Tool.

Incident means any interruption in any function performed for the benefit of a Plan Sponsor.



Key Personnel means any personnel identified in **Section 1.031** as Key Personnel.

MDOC means Michigan Department of Corrections.

Mortality Timer means a key security feature that requires each Digital Media player to connect to the kiosk within a certain period of time to ensure that each Digital Media player is regularly updated with the latest music catalog and player software updates.

New Work means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, such that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.

Ozone-depleting Substance means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

PCI means Payment Card Industry.

Post-Consumer Waste means any product generated by a business or consumer which has served its intended end use; and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

Post-Industrial Waste means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

PREA means Prison Rape Elimination Act.

Prisoner Accounting System means the accounting system utilized by the Michigan Department of Corrections which allows reading and/or writing capabilities and captures accounting events for prisoners to include check writing, debt collection and debt tracking, manual general ledger entry and 1099 reporting with all transactions completed in real time. Each prison has its own separate caseload and prisoner funds are transferred from one caseload to another as the prisoner transfers.

Prisoner Benefit Fund (PBF) means a fund that may be used to fund only those services, equipment, and supplies which have a direct benefit to the prisoner population and are solely for prisoner use or to fund contributions to charitable organizations approved by the MDOC.

Recycling means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

Reuse means using a product or component of municipal solid waste in its original form more than once.

Reserve means that section is not applicable or included in the Contract. This is used as a placeholder to maintain consistent numbering.

Services means any function performed for the benefit of the State.

SLA means Service Level Agreement.



Source Reduction means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

State Location means any physical location where the State performs work. State Location may include State-owned, leased, or rented space.

Subcontractor means a company selected by the Contractor to perform a portion of the Services, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

Unauthorized Removal means the Contractor's removal of Key Personnel without the prior written consent of the State.

Waste Prevention means source reduction and reuse, but not recycling.

Pollution Prevention means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

Work in Progress means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

Work Product refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by the Contract.



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This Contract is for electronic services for prisoners housed in the Michigan Department of Corrections (MDOC) correctional facilities. The Contractor is responsible for providing services, technology, equipment and/or products. Technology, equipment and products include incoming and outgoing electronic mail for prisoners, digital media players, music/media downloads and electronic processing of prisoner vendor catalog orders for prisoner personal property. Services are to be made available at any facility housing MDOC prisoners/parolees. See Attachment B for a listing of all current MDOC facilities. The MDOC currently houses approximately 43,000 prisoners. The number of prisoners housed at any one time with the MDOC will vary and no specific number of prisoners/parolees is guaranteed. Additionally the MDOC cannot guarantee the number of items ordered by prisoners.

Based on the operational needs of the correctional system, the MDOC reserves the right to require the Contractor to add or delete facilities, in addition to those originally contemplated. The MDOC may adjust the number of prisoners served at any time. The MDOC may increase or decrease the number of facilities housing prisoners. No specific number of facilities housing prisoners or number of prisoners is guaranteed. Therefore, the Contractor must be prepared to make any necessary changes as required. Verbal notification will be provided by the MDOC CCI, or designee, with follow-up written notification. Written notification will be provided at least 14 days in advance.

The Contract is for a period of three years, 9 months. The Contract will be effective February 1, 2017 through October 31, 2020. Although the contract effective date is February 1, 2017, the Contractor will not be assessed service level agreements until after October 31, 2017. This period of time will encompass services rendered / transition. February 1, 2017 the Contractor will start providing music download services, music players, and e-messaging services. The Contractor must introduce vendor catalog ordering through their kiosks no later than October 31, 2017.

1.012 Background

Currently the MDOC is providing the following services to prisoners relevant to this Contract:

Incoming and outgoing electronic mail: The MDOC currently allows prisoners to correspond with friends and family via a kiosk installed in housing units as determined by the MDOC. Prisoner's friends and family members are allowed to send and receive electronic messages and send photos to prisoners via a secure web site.

Processing vendor catalog orders: The MDOC currently allows prisoners to place catalog orders for items approved by MDOC. The orders are placed on a paper disbursement and the purchase is approved by MDOC staff. The approved disbursement and catalog order is processed by MDOC business office staff. Catalog orders are batched and sent to vendors for processing. The MDOC would like to pursue options to allow prisoners to place multiple vendor catalog orders via the kiosk and process transactions with MDOC approved vendors that will interface with the prisoner accounting system.

Digital Media Player and Music Downloads: The MDOC currently allows prisoners to purchase digital media players and music downloads for their MDOC approved digital media player.

1.020 Scope of Work and Deliverables

1.021 In Scope

All services must be Americans with Disabilities Act (ADA) compliant (reference www.ADA.GOV).

CONTRACTOR SERVICES, EQUIPMENT AND TECHNOLOGY:



Incoming and outgoing electronic mail: The Contractor must provide a secure email system that enables friends and family to communicate with prisoners by email, photos, and E-Cards. All photos and electronic messages with attachments (except E-Cards as approved by the MDOC) must be placed in designated “requires approval” buckets for MDOC screening for appropriate content before being released to prisoners or friends and family for viewing/reading. Clean emails (i.e., emails that do not contain flagged words or photo attachments) will be released for prisoner reading and viewing as determined by the MDOC. MDOC staff must be able to retrieve photos or emails at any point even if they have already been cleared and released. Prisoners shall be able to purchase “electronic stamps” for the purpose of composing or responding to messages via the kiosk and or digital media player, and for copies (black and white or color) of photos or emails for a fee. Friends and family shall be able to purchase stamps on JPay.com or the JPay mobile app. This system must provide MDOC with security options to review incoming mail and outgoing mail and restrict any mail that does not comply with MDOC policy.

The Contractor must provide a minimum of one kiosk per every 100 prisoners, or a minimum of two kiosks for housing units with 150 or more prisoners as approved by the MDOC, to allow prisoners to compose outgoing messages and read incoming messages. Additional kiosks may be necessary depending on housing unit restrictions, to accommodate larger/smaller populations or meet special population needs. The MDOC currently has kiosks in approximately 289 housing units (see Attachment C). The kiosk must interface with the prisoner accounting system and have the capability of allowing the prisoners to view their general account balance and historical transaction data. The Contractor must ensure required security protocols with State firewalls are maintained.

Processing vendor catalog orders: The Contractor must provide options to allow prisoners to place multiple vendor catalog orders for prisoner personal property via the kiosk and process transactions with an interface with the prisoner accounting system. The Contractor’s system must provide the ability to interface with multiple MDOC approved vendors and transfer funds to the vendors providing products or services to prisoners. The Contractor must ensure required security protocols with State firewalls are maintained.

Digital Media Player and Music Downloads: The Contractor must provide a program to supply digital media players to prisoners and the ability to download music from a housing unit kiosk.

CONTRACTOR SERVICES AND PRODUCTS:

The Contractor must assume all costs associated with providing services in this Contract including all installation costs needed to provide kiosks or access to the system for reporting purposes. The Contractor is responsible for providing all hardware, software (including security software), network connections, equipment (including fiber optic cabling) and interface costs at no cost to the State. Contractor currently uses MDOC fiber optic cabling in some sites, the use of any additional existing fiber optic cabling must be approved by the MDOC. Any equipment damaged (excluding the digital media players purchased by prisoners) by prisoners must be replaced at no cost to the State. All fiber optic cabling and associated hardware shall remain the property of the State at the conclusion of this Contract, unless otherwise determined by the MDOC.

MDOC will provide the Contractor with test inmates in the daily file. The Contractor must have “testing” accounts (fake prisoner names, numbers and fake registered customers) available to the MDOC that will have the capability to allow the MDOC to use the services in this Contract as a prisoner or as a customer. Additionally, a kiosk must be installed in the Jackson and Kinross area Business Offices where this testing will occur.

1.022 Work and Deliverable

Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

1. Incoming and Outgoing Electronic Mail:



- 1.1. The Contractor must provide an electronic messaging service including but not limited to such features as E-Messaging and E-Cards for MDOC prisoners.
- 1.2. The Contractor's system must allow prisoners to correspond with friends and family through e-messaging via a kiosk installed in each housing unit (or other location in the facility as approved by the MDOC) or via the prisoner's digital media player offered as part of this Contract.
- 1.3. The Contractor must not allow prisoners to initiate electronic mail with family members or friends. The friend or family member must register to send a message to the prisoner before the prisoner is allowed to respond/initiate a message.
- 1.4. The Contractor must provide kiosks with multiple language options. All kiosks must include English and Spanish.
- 1.5. The Contractor's system must have the ability to translate incoming messages from Spanish to English in the review mode. The original Spanish message must be shown with a translation in English.
- 1.6. The Contractor must not allow users to type special characters or bold/italicized words.
- 1.7. The Contractor must provide equipment and services that are ADA compliant, to include at a minimum, wheelchair accessibility and Braille or voice capabilities. Capability will be available at no additional cost. Kiosks will be installed at locations desired by MDOC.
- 1.8. The Contractor's kiosk system must be able to reflect updated prisoner location on a daily basis so that mail can be re-directed in the event of a transfer. The State will provide a location file each day that updates prisoner locations.
- 1.9. The security and privacy of prisoner's information is essential (See Attachment F, 5.8). Prisoners are not allowed to view other prisoner's accounts or information. The Contractor must provide a security screen for each kiosk to prevent prisoners from viewing other prisoners' accounts.
- 1.10 The Contractor's system must allow only the prisoner or assigned MDOC employees access to each prisoner's account activity for at least the previous 18 months online and maintained offline indefinitely thereafter. If data is offline, upon MDOC's request JPAY will deliver the information within two business days.
- 1.11 Security access for all prisoners is critical. The Contractor must provide options for security access such as password or swipe card.
- 1.12 The prisoners must have the ability to reset and change their own passwords at the kiosk.
- 1.13 The Contractor must allow and provide additional security enhancement options as they are developed or as requested by the MDOC, such as the MDOC resetting or changing prisoner passwords.
- 1.14 Prisoner's friends and family members must be allowed to send electronic messages and photos to prisoner via a secure web site.
- 1.15 Electronic messages must be screened for content (reference 1.022 section 1.21).
- 1.16 The ability to restrict or block incoming messages by the MDOC must be available.
- 1.17 Users must be notified via the secure web site that all messages sent to the facility will be reviewed and approved or rejected based on content.



- 1.18 The Contractor must establish a method to block users who have violated MDOC policy when sending messages or attachments. Additionally, the Contractor must allow MDOC the ability to block users.
- 1.19 The Contractor must provide all necessary connections, required security, printers, other equipment and printer supplies, not limited to paper, toner and any other necessary components for electronic mail and photos to be received and printed in MDOC facility mail rooms. Additionally all equipment, software, installation, maintenance and repair costs for this system are the responsibility of the Contractor and will be provided at no cost to the MDOC. This includes all necessary upgrades to current equipment installed in MDOC facilities.
- 1.20 If the Contractor does not provide the equipment and supplies in a timely manner, and the MDOC is required to purchase the items, the Contractor will be responsible for reimbursing MDOC for the costs. Supplies must be received within two business days and equipment received within five business days unless approved by the CCI.
- 1.21 The Contractor must screen all mail for content before being released to MDOC. Clean emails (emails that do not contain photo attachments or flagged words) will be released for prisoner reading and viewing as determined by the MDOC. Flagged emails will be held in buckets for MDOC staff to review before release. MDOC will work with the Contractor to create an allowable "word list" for screening purposes.
- 1.22 Electronic mail security must have the capability to recognize words or phrases on prohibited lists and of group of special characters.
- 1.23 The Contractor's system must screen and flag messages as directed by the MDOC in allowing MDOC employees to review, approve, or decline a flagged message or group of flagged messages.
- 1.24 Authorized MDOC facility staff must have the ability to select groups of messages for approval without having to read each message.
- 1.25 The Contractor's system must provide MDOC with security options to review incoming mail and outgoing mail and restrict any mail that does not comply with MDOC policy.
- 1.26 The Contractor's system must provide a process for MDOC staff to restrict prisoner access to the electronic mail system by
 - Allowing the prisoner to send but not receive mail
 - Allowing the prisoner to receive but not send mail
 - Restricting the prisoner access to all mail functions
 - Routing the prisoner's mail through additional security holding areas ("buckets") as determined by the MDOC
- 1.27 The Contractor's system must allow the MDOC to readily change / alter the reasons why a message that was received was subsequently denied via a drop down box.
- 1.28 The Contractor's system must send a notification unless directed by the MDOC to the sender when a message was denied specifically noting the reasons for the denial. The final format / language of this response template is subject to review by the MDOC CCI.
- 1.29 The Contractor's system must allow MDOC to flag specific prisoners or senders so messages to and from flagged individuals automatically escalate to a higher authority such as a MDOC Inspector or other designated MDOC employees for review.



- 1.30 Authorized MDOC facility staff must have the ability to review and approve or deny all attachments of messages.
- 1.31 All attachments must be flagged for screening by MDOC employees, or a MDOC approved designee.
- 1.32 The Contractor must allow prisoners to purchase “electronic stamps” and copies of pictures, emails or account statements for a fee. If requested, the Contractor must provide new black and white or color printers to each MDOC facility at no cost to MDOC. The Contractor must ensure that friends and family do not have the ability to purchase electronic stamps for prisoners.
- 1.33 The Contractor’s system must allow MDOC to send administrative messages, attachments or policy changes to all prisoners, to a specific prisoner, and/or a specific sender of a message at no cost to the MDOC.
- 1.34 The Contractor’s system must have re-routing capabilities for prisoner transfers throughout the State to allow for receiving/printing emails at the facility to which the prisoner is transferred (Nightly files will be sent to the Contractor identifying all prisoner movement each day). (See Attachment F, 2.6)
- 1.35 The Contractor must be able to restrict the number of friends or family members sending messages to prisoners as requested/required by MDOC. This may include the MDOC providing a list of friends or family to the Contractor who is approved and a universal list of users approved for all MDOC prisoners.
- 1.36 The Contractor’s system must have the capability to interface with the Digital Media Player offered as part of the Contract. The interface must allow the prisoner to at a minimum:
 - Download e-mail attachments and E-Cards for later viewing
 - Draft e-mails while offline
 - Read attachments or rules, regulations, and policy announcements sent by the MDOC.
- 1.37 The Contractor must provide a minimum of one kiosk per every 100 prisoners, or a minimum of two kiosks for housing units with 150 or more prisoners as approved by the MDOC to allow prisoners to compose outgoing messages and read incoming messages. Additional kiosks may be necessary depending on housing unit restrictions, to accommodate larger populations or meet special population needs.
- 1.38 The Contractor’s kiosk must interface with the prisoner accounting system and have the capability of allowing the prisoners to view their general account balance and historical transaction data, to include at least the last 25 transactions (See Attachment F, 2.6).
- 1.39 The Contractor must have a secure web-based online solution that complies with the State of Michigan computer requirements for MDOC employees to view prisoner or friends and family usage history on all services (See Attachment F, 5.1).
- 1.40 The Contractor must be PCI Compliant (reference Article 2 Terms and Conditions – 2.103) on all credit card transactions.
- 1.41 All functions of the Contractor’s system including necessary updates to existing equipment installed in MDOC facilities must be available on the actual services contract start date unless otherwise approved by the MDOC.



- 1.42 All transaction fees and costs to prisoners, family and/or friends for the use of these services are identified in Attachment A.
- 1.43 The Contractor must provide an option for MDOC staff and prisoners to exchange messages and Attachments as approved by MDOC. The prisoner must be able to send messages and attachments to approved MDOC employees and the Contractor's system must have the capability to allow MDOC staff to retrieve and directly respond to messages. (Note: Prisoner to prisoner correspondence is not allowed via electronic mail.)
- 1.44 The Contractor's system must have the capability to allow prisoners to file grievances including attachments with the MDOC via the kiosk and provide a method for MDOC staff to retrieve and respond to grievances via the kiosk.
- 1.45 The Contractor must work with MDOC staff to determine appropriate programming and routing options.
- 1.46 The Contractor's kiosk must have the capability to display text based attachments of other MDOC related materials for prisoners (such as prisoner guidebook, facility rules, MDOC policies or procedures, etc.) as determined by the MDOC.

2 **Reserved**

3 **Reserved**

4 **Reserved**

5 **Reserved**

6 **Processing vendor catalog orders:**

- 6.1 The Contractor must provide a system to allow prisoners to place vendor catalog orders for prisoner personal property and or services (i.e. phone minutes) via the kiosk and process transactions with an interface to the prisoner accounting system (See Attachment F, 2.6 and 5.1). The MDOC may require the Contractor to develop an approval process within the ordering system to ensure items being ordered by prisoners are only for MDOC approved property items, and only from approved MDOC vendors.
- 6.2 The Contractor must work with the MDOC to establish property limits for prisoners in different custody levels. MDOC reserves the right to determine which items and the number of items to be available for ordering via the kiosk.
- 6.3 The Contractor's system must provide the ability to interface with multiple MDOC approved vendors and transfer funds to the vendors providing products or services to prisoners.
- 6.4 The Contractor must submit the order and the funds to the vendors providing the products or services within two business days of receiving the funds from the prisoner accounting system.
- 6.5 The Contractor must have a secure web-based online solution that complies with the State of Michigan computer requirements for MDOC employees to view prisoner purchase or usage history on all transactions (See Attachment F, 5.1 and 9.4).
- 6.6 All equipment, software, installation, maintenance and repair costs for this system are the responsibility of the Contractor and will be provided at no cost to the MDOC.



- 6.7 The Contractor must provide kiosks with multiple language options. All kiosks must include English and Spanish.
- 6.8 All kiosks must provide a picture and written description, including the item number, for all MDOC approved items.
- 6.9 The Contractor must provide equipment and services that are ADA compliant, to include at a minimum, wheelchair accessibility and Braille or voice capabilities. Capability will be available at no additional cost to MDOC. Kiosks will be installed at any locations desired by MDOC.
- 6.10 All functions of the Contractor's system including necessary updates to existing equipment installed in MDOC facilities must be available on the actual services contract start date unless otherwise approved by the MDOC.
- 6.11 Invoices must be submitted to the MDOC as agreed upon by the Contractor and the MDOC.
- 6.12 All invoices to the MDOC must include (a) month for billing; (b) facility name; (c) prisoner name; (d) prisoner number; (e) prisoner's individual order amount; (f) prisoner's individual order receipt number; (g) sales tax.
- 6.13 Contractor must provide an invoice for each facility and a summary of all facility invoice amounts.

7 Digital Media Player and Music Downloads:

- 7.1 The Contractor must provide a system to allow prisoners to purchase digital media players and music / media downloads via an electronic system utilizing a housing unit kiosk or, if approved by the MDOC, a kiosk located in an area in the facility designated by the MDOC. The electronic system must also process transactions with an interface to the prisoner accounting system (See Attachment F, 2.6). The digital media player make and model must be approved by the MDOC prior to selling to the prisoner population.
- 7.2 Once the prisoner has placed the order, the Contractor must deliver the digital media player to the facility within seven business days of receipt of the order and funds.
- 7.3 The Contractor's system must provide the ability to interface with the prisoner accounting system to provide products or services to prisoners (See Attachment F, 2.6).
- 7.4 The Contractor must screen music / media downloads for allowable content and allow the MDOC the ability to restrict or block certain types of music / media or edit the music / media catalog and remove songs / media deemed inappropriate. All music / media with a "Parental Advisory" from "The Parents Music Resource Center" will not be allowed in addition to other titles deemed inappropriate by the Contractor or the MDOC.
- 7.5 The Contractor must have a system to remove songs / media or albums from the catalog if it is found to be inappropriate. Additionally, if the media was previously downloaded by any MDOC prisoner, the media must be removed from the prisoner's player and cloud storage when the digital media player is connected to the kiosk. A full credit for the media must be provided to the prisoner at the Contractor's expense.
- 7.6 The digital media player must offer a minimum of 1 million song titles available for purchase to ensure a vast array of prisoner demographics. The prisoner must have the option to:
 - search by artist, album and genre on the kiosk and media player; review descriptions of arties and albums on the kiosk and media player;



- listen to a 15 or 30 second clip of the song prior to purchase. Available on all music on the kiosk and at least 4,000 songs on the media player;
- browse the entire catalog in real time on the kiosk and the last updated version (100,000 songs) on the digital media player;
- download a song in as little as 5-10 seconds from the kiosk.

- 7.7 The player must have a mortality timer that requires the prisoner to connect to a kiosk at least once every 30 days to re-new the use of the player, ensure firmware is up to date, provide timely removal of content MDOC deems inappropriate and to ensure the player is in possession of the rightful owner.
- 7.8 The player must have a fraud lock feature that locks the player if it has been reported lost or stolen. This feature must render the player useless when the mortality time runs out.
- 7.9 The player must have a security shut off option that will shut off the player if it is plugged in to any other device than the intended kiosk.
- 7.10 The player must be programmable to digitally identify each individual prisoner who purchases a player. When powered on the player must display the prisoner's name and number to provide easy identification that ensures the player is in possession of the rightful owner.
- 7.11 The player must have the ability to store and display electronic prisoner messages once approved by the facility. The electronic message feature must be able to be turned off if not approved for use by MDOC.
- 7.12 The digital media player must have the capability to interface with the electronic mail services offered as part of the Contract. The interface must allow the prisoners to at a minimum:
- Download attachments for later viewing
 - Draft emails while offline
 - Read attachments or rules, regulations, and policy announcements sent by the MDOC
- 7.13 The player must provide the prisoner with an account transaction history and account balance from the prisoner accounting system to include at least the last 25 transactions and media account balance after each connection to the kiosk. The feature must be able to be turned off if not approved for use by MDOC.
- 7.14 The player must have the ability to delete songs / media from the player memory to make additional space for new song / media purchases. The prisoner must have the ability to re-download a previously deleted song /media back to the player without additional charges. The prisoner must have unlimited storage for this purpose.
- 7.15 The player must have built in FM radio with pre-set station capabilities.
- 7.16 The player may have the ability to play educational, religious material, games or other media as approved by MDOC.
- 7.17 The player must be able to play media that allow for an unlimited number of delete and reload capabilities to ensure the prisoner can purchase new models from the same vendor and transfer media as well as unlock an old device if the prisoner chooses to send a previously purchased digital media player home.
- 7.18 The player must have the ability to have all security features removed from the player when the prisoner is paroled or discharged. The device must contain all of their purchased songs / media and



allow the prisoner full use of the player upon their parole or discharge.

7.19 The player must be clear, allowing full view of all internal components for security purposes.

7.20 The player must have a colored screen.

7.21 The player must operate off of rechargeable lithium batteries. .

7.22 The Contractor must have a secure web-based online solution that complies with the State of Michigan computer requirements for MDOC employees to view prisoner purchase or usage history on all services (See Attachment F, 5.1).

7.23 All equipment, software, installation, maintenance and repair costs for this system are the responsibility of the Contractor and will be provided at no cost to the MDOC.

7.24 The Contractor must provide kiosks with multiple language options. All kiosks must include English and Spanish.

7.25 The Contractor must provide equipment and services that are ADA compliant, to include at a minimum, wheelchair accessibility and Braille or voice capabilities. Capability will be available at no additional cost to MDOC. Kiosks will be installed at any locations desired by MDOC.

7.26 All functions of the Contractor's system must be available on the actual services contract start date unless otherwise approved by the MDOC

7.27 If digital media was awarded to another contractor in a future RFP, Contractor must work with MDOC and the new contractor to achieve the most optimal and cost-effective solution for the prisoner population.

8 Refunds>Returns of Contractor merchandise

8.1 The Contractor must provide a mechanism to refund incorrect charges to a prisoner's account. Contractor must provide refund / return detail.

8.2 The Contractor must provide refunds within two business days of notification and verification of merchandise returns, defective items or out of stock items. Contractor must provide refund / return detail.

8.3 The Contractor must accept returns and provide refunds, if a prisoner paroles from the MDOC, discharges, or dies.

8.4 The Contractor is not responsible for vendor catalog order refunds/returns.

9 Customer Service

9.1 The Contractor must have a technology support services department with individuals specifically assigned to the Contract.

9.2 The Contractor must have experienced Contractor representatives who make personal visits to all MDOC facilities/prisons at least annually. Additionally, the Contractor must schedule and coordinate quarterly meetings to update the MDOC on the status of the services being delivered and available new technology / opportunities available.



9.3 The Contractor must provide a comprehensive technical support program to include support for friends and family, digital media players, kiosk repair/replacement and other equipment repair/replacement. At a minimum this plan must include:

- i. A toll-free telephone number and email address that is available 24/7/365.
- ii. During business hours, technicians must be available to assist customers Monday - Friday, 6:00 a.m. – 7:00 p.m. Eastern.
- iii. After business hours, technicians must be available to assist customers Monday – Friday, 7:00 p.m. – 6:00 a.m. and beginning on Fridays at 7:00 p.m. through Monday morning at 6:00 a.m. Eastern, including holidays.
- iv. The Contractor must include a return call or response back to the caller (MDOC staff or friend/family) within one hour of receipt of the call or email.
- v. Customer Service Center must be located in the Continental United States.
- vi. Additionally, Contractor must work with MDOC to establish a service level management process to be adhered to.

9.4 The Contractor's internal controls must be approved by the MDOC to ensure any prisoner activity that appears to violate MDOC' policies and procedures will be documented.

9.5 The Contractor must have one or more knowledgeable individual(s) specifically assigned to State of Michigan accounts that will respond to State agency inquiries within 24 hours.

9.6 The Contractor's statewide toll-free number for customer service calls is 800-574-JPAY (5729).

9.7 The Contractor must provide a method to ensure software kiosks issues are repaired within 48 hours of notification, or hardware replaced if necessary, within five business days (any kiosk damaged by prisoners must be replaced at no cost to the State).

9.8 The Contractor must not have a kiosk outage greater than 10% in a 30-day period. Failure to achieve this percentage each month will be handled as outlined in the Service Level Agreement (SLA) (Attachment D).

9.9 The Contractor must repair any other equipment and/or system issues within two business days of notification by the MDOC, or replace if necessary, within five business days (any equipment damaged by prisoners must be replaced at no cost to the State).

10 Communication with Prisoners

10.1 The Contractor must respond to all prisoner correspondence received via postal service and the prisoner must receive a written response (responses via e-mail are acceptable) within seven business days.

10.2 The Contractor must respond to prisoner correspondence received electronically via the kiosk within seven business days of receipt.

10.3 The Contractor is responsible for providing information regarding prisoner transactions within three business days of request from the MDOC.

11 Technology Requirements

NOTE: DTMB Technical Standard 1340.00.07 (Electronic Data Encryption) as referenced in this section – It is the Contractor's responsibility to contact the Contract Manager/Contract Compliance Inspector to



obtain the latest revision on an annual basis and maintain compliance. At the time of Contract latest revision is dated 6/16/2015

NOTE: DTMB Authoritative Policy 1340 (Information Technology Information) as referenced in this section – It is the Contractor's responsibility to obtain the latest revision on an annual basis by checking the State website at <http://www.michigan.gov/dmb/0,4568,7-150-56355-108233--,00.htm> and maintain compliance. At the time of Contract latest revision is dated 7/18/16.

- 11.1 The Contractor must provide MDOC access to applications as determined by the State of Michigan (SOM) through a Citrix based solution or other method approved by the SOM.
- 11.2 A prisoner, or any offender in a MDOC facility, must **not** be permitted access to the internet except with approval of the Correctional Facilities Administration (CFA) or Field Operations Administration (FOA) Deputy Director after consultation with the Manager of the Automated Data Systems Section (ADSS), Budget and Operations Administration (BOA).
- 11.3 The Contractor's servers must have full disk encryption, including at rest and in flight.
 - a) All data transmissions/interfaces through LAN or wireless connections, data at rest, and storage of data must meet the Department of Technology, Management & Budget's (DTMB) encryption standards as outlined in DTMB Technical Standard 1340.00.07 (Electronic Data Encryption) and DTMB Authoritative Policy 1340 (Information Technology Information). Per DTMB's Standard 1340.00.07, the State's requirements for encrypting transmitted data are:
 - 1) Centrally managed digital certificates by DTMB
 - 2) Approved data encryption (LAN or wireless connection) that meets DTMB Technical Standard 1340.00.07.
 - 3) Message data integrity from source to host will be verified by making sure the message hasn't been modified since it left the storage source by adding an encrypted digest to the message, using either the MD5 or the SHA-1 algorithms.
- 11.4 The Contractor must provide written policy and procedures subject to the approval of the SOM as to the methods to be used to wipe clean all Technology Infrastructure.
- 11.5 The Contractor must provide a method to allow MDOC employees the ability to search the read-only database and sort data for investigative purposes at no cost to the MDOC.
- 11.6 Technology must be adaptable to allow the MDOC to search via a secure web link for access by approved MDOC facility staff. The technology must comply with the State of Michigan technology requirements (See Attachment F, 5.1).
- 11.7 Reserved
- 11.8 The Contractor must comply with all technical requirements on Attachment F.
- 11.9 The Contractor is responsible for providing all computer technology and equipment at no cost to the MDOC. Any part of the Contractor(s) equipment including computers, software, printers, copy machines, or any other electronic device(s), will not be connected to the State of Michigan Network.
- 11.10 The Contractor must provide and/or complete any documentation requested by the SOM as to the infrastructure solution and security of the Contractor Supported Network.



- 11.11 The Contractor is liable for security breaches, computer hacking, transaction fraud, etc. deemed to be the fault of the Contractor.
- 11.12 The Contractor is not authorized to transfer any MDOC data to their servers, external media without express permission of MDOC.
- 11.13 All fiber optic cabling and associated hardware shall remain the property of the MDOC at the conclusion of this Contract.

12 Security/Background Checks

- 12.1 All Contractor staff working on the Contract must undergo a security and background check, to include at a minimum ICHAT <http://apps.michigan.gov/ichat/home.aspx>, to be performed by the Contractor.
- 12.2 All delivery drivers, Contractor's and subcontractor's staff that are entering an MDOC facility must be LEIN cleared by MDOC at least 48 hours prior to facility entry. If any of the Contractor's or subcontractor's employees have a felony or misdemeanor conviction (excluding minor driving offenses), the Contractor's or subcontractor's employees may not be permitted to work under the Contract and may not enter any MDOC facility.
- 12.3 The Contractor must anticipate delays when visiting any facility due to issues within that facility.
- 12.4 All vehicles entering a correctional facility must be inspected before entry of the secure perimeter.

13 Training

- 13.1 The Contractor must provide training to at least one MDOC-designated person at each MDOC facility, designated MDOC Business Office staff and designated MDOC Central Office staff on the proper use of the Contractor's equipment and review system report capabilities, on a yearly basis. Additional training may be requested by the MDOC throughout the contract as needed. Contractor must provide live or remote training based on MDOC's needs. Training must be provided to the MDOC at no cost to the State.
- 13.2 The Contractor must provide both written and video training instructions for prisoners on the use of the kiosks and other services.

14 Access to Contractor System

- 14.1 The Contractor must have a secure web-based online solution that complies with the State of Michigan computer requirements for MDOC employees to view prisoner orders, order refunds, transaction history and/or any visiting details (See Attachment F, 5.1).
- 14.2 All functions of the Contractor system must be available on the actual services contract start date unless otherwise approved by the MDOC.
- 14.3 The Contractor's system must have the ability to send data files at least once every 24 hours to MDOC and receive data files at least once every 24 hours from the prisoner accounting system with the times to be determined by MDOC. The MDOC will send data files at least once every 24 hours to the Contractor that will provide the prisoner's name, prisoner's identification number and current facility and lock location.
- 14.4 The Contractor must send a data file at least once every 24 hours to MDOC with transactions listed for the purpose of finalizing purchases from the prisoner's account with the time to be determined by MDOC. Once the Contractor's data file has been processed, the MDOC will send a confirmation data file identifying all allowable purchases as approved within the parameters determined by the MDOC.



The Contractor must process all orders once the confirmation file has been received from MDOC. The Contractor must work with the MDOC to develop approved data file layouts. Current data file layouts are provided in Attachment F, Technical Requirements.

- 14.5 The Contractor's system must be configured to allow a designated dollar amount for the total purchase or up to the balance in the prisoner's account. The designated dollar amount will be determined by MDOC with the capability of being entered directly into the Contractor's system by authorized MDOC system administrators.
- 14.6 The spendable dollar amount or the items a prisoner is allowed to purchase is determined by MDOC and may be subject to change throughout the duration of the Contract.
- 14.7 The individual items on each purchase will be processed in priority order in a manner established by MDOC.
- 14.8 In the future, MDOC may pursue real time processing for transactions and the Contractor must work with MDOC to allow real time transaction processing at that time at no additional cost.

15 Working with other Contractors

- 15.1 The Contractor must work with State and other Contractors to perform services/deliverables and assist in problem resolutions including, but not limited to, establishing new communications channels, downtime, testing, etc. (e.g., DTMB and information technology systems contractors).

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

The Contractor must provide qualified and trained staff to properly perform services under the Contract.

The Contractor's team of Key Personnel must include a Project Manager; Customer Service Representative; and a Technical Support Representative. Key personnel must not be removed from the Contract unless prior written approval has been received from the Contractor Administrator. Key Personnel must be staffed and in place 30 days prior to the start of the Contract.

1. Ms. Jessica Lust is the Project Manager - This position is the point of contact for the duration of this Contract. The person will be responsible for attending all required meetings and continuously visiting the correctional facilities/prisons in Michigan to ensure the services required in this Contract are delivered appropriately. This position is also responsible for the development and adherence to policies and procedures and ensuring that all issues are resolved in a timely manner.
2. Ms. Michele Paige is the Customer Service Representative - This position is the primary point of contact for MDOC related issue resolution.
3. Mr. Hezi Ben Moshe is the Technical Support Representative – This position is the primary point of contact for MDOC related technical issues.



Organization Chart:

COMPANY ORG CHART

CEO

Ryan Shapiro

SALES

Greg Levine
VP of Sales

PRODUCT MANAGEMENT

Yaakov Katz
VP of Products

FINANCE

Carmen Williams
Controller

COO

Annette Chambers-Smith

CALL CENTER, BUSINESS SUPPORT, LOCK BOX

Gregory Campbell
Customer Service Director

CLIENT RELATIONS

Lee Posner
VP of Client Relations

CLIENT SERVICES

Jessica Lust
Project Manager

Michele Paige
Customer Service Rep

IT OPERATIONS

Hezi Ben Moshe
Technical Support Rep

MARKETING

Jade Trombetta
Head of Marketing

CAO

Errol Feldman

LEGAL

Jessica Camuffo
General Counsel

COMPLIANCE

Shari Katz
Compliance Officer

Doug McGriff
Internal Auditor

CIO

Aman Junaid

DEVELOPMENT

Tom Harrah
VP of R&D

DEVELOPMENT

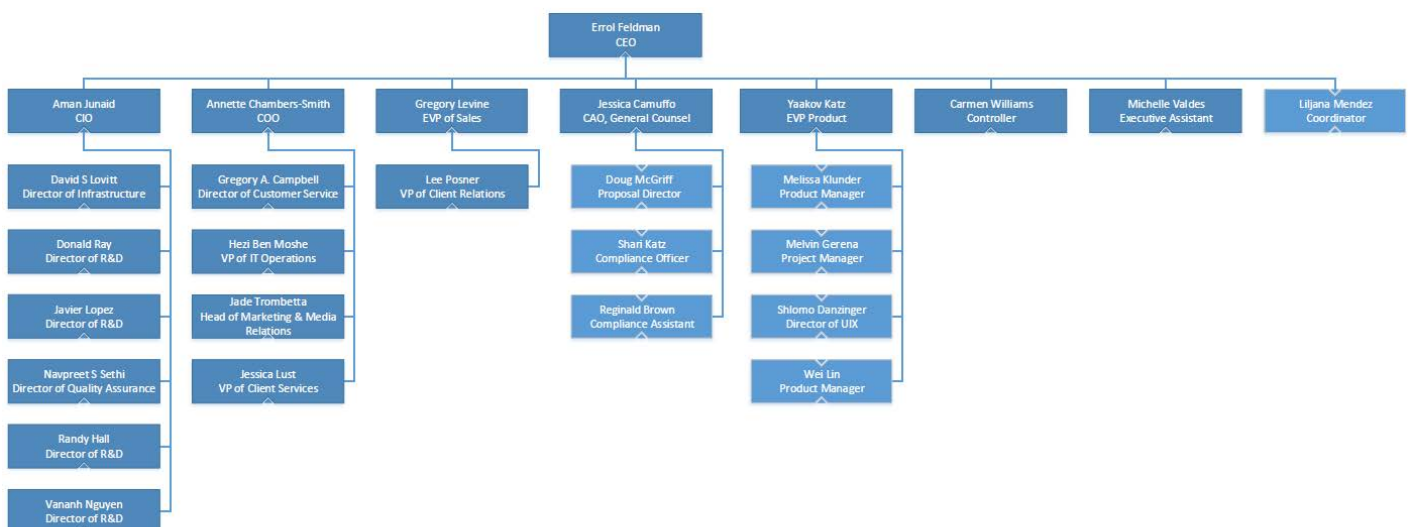
Donald Ray
Dir. of R&D

INFRASTRUCTURE

David Lovitt
Dir. of Infrastructure

QUALITY & ASSURANCE

Sunny Sethi
Dir. of Quality Assurance





1.040 Project Plan

1.041 Project Plan Management

A. Transition Plan

1. Within 10 calendar days of the Contract effective date, the Contractor must submit a revised, expanded, detailed narrative of their Transition Plan to the MDOC CCI. The Contractor must continue to revise the Transition Plan and submit to the MDOC CCI on, no less than, a monthly basis until all items have been successfully implemented, per the MDOC CCI's input on progression of, or acceptance of each item.

Transition Period is that initial period of time commencing on the Contract start date while the Contractor is training its employees and ending on the date the Contractor assumes control over the services at each the facilities. During the Transition Period, there will be no billing submitted by the Contractor nor any payments made by the MDOC to the Contractor. Upon Contract signing by both parties and contract execution, the Contractor will commence a 9 month Transition Period to the actual services contract start date. The Contractor's Michigan Project Manager must be onsite in Michigan throughout the transition period to ensure all issues are addressed and resolved unless otherwise determined by the MDOC. The parties must mutually agree in writing to the termination date of the Transition Period.

2. The Contractor's Transition Plan must ensure they work in partnership with the MDOC to deliver uninterrupted contracted services, including infrastructure of systems and staffing. The Contractor must be responsible for a customized plan of action to ensure a seamless transition in all aspects of contracted services. To accomplish this, the Contractor activities must include, but are not limited to, the following:
 - a. Conduct regular, scheduled communication with key MDOC and subcontractor personnel and specialty service providers.
 - b. Deployment of Contract and transition management teams.
 - c. Network/IT development activities.
 - d. Computer interface and system management.
 - e. Training plan for MDOC staff and prisoners.
 - f. Documentation and data collection.
 - g. Staffing plan.
 - h. Implementation of the Contractor's implementation and checklist (in addition to the MDOC Start Up Plan activities) and transition tasks.
 - i. Post-implementation review.
 - j. Jointly review all Contract attachments and appendices, and adjust if needed.
 - k. Emergency contingency plan for delivery of services.



Contractor's Transition/project plan:

Task Name	Duration	Start	Finish	Notes
Michigan DOC - Kiosk network upgrades & additional services rollout at all facilities	204 days	Thu 1/12/17	Tue 10/24/17	
Planning Phase	24 days	Thu 1/12/17	Tue 2/14/17	
Kickoff Meeting	1 day	Thu 1/12/17	Thu 1/12/17	
Review overall scope of project	3 days	Fri 1/13/17	Tue 1/17/17	
Review list of Keefe tablet owners	10 days	Wed 1/18/17	Tue 1/31/17	
Review list of release dates for all MDOC prisoners	10 days	Wed 1/18/17	Tue 1/31/17	
Email word list and watch list cleanup	20 days	Wed 1/18/17	Tue 2/14/17	
Implementation Phase	190 days	Mon 1/16/17	Fri 10/6/17	
Contract Effective Date	1 day	Wed 2/1/17	Wed 2/1/17	
Email Product	23 days	Mon 1/16/17	Wed 2/15/17	
Training and communication to MDOC staff about new mail process	23 days	Mon 1/16/17	Wed 2/15/17	
Activate new email platform (with translation of messages into Spanish)	1 day	Wed 2/15/17	Wed 2/15/17	
Media Transition Implementation	53 days	Mon 2/6/17	Wed 4/19/17	
Notify inmate population about media sales	24 days	Wed 2/1/17	Mon 3/6/17	32 calendar days
Transition to JPay media account	1 day	Wed 2/15/17	Wed 2/15/17	
Promotional swap of existing players (free of charge)	45 days	Mon 3/6/17	Fri 5/5/17	60 calendar days
Begin shipment of tablets (new orders)	1 day	Mon 3/13/17	Mon 3/13/17	ongoing
Implement promo sale price of tablets for non-holders	45 days	Mon 3/6/17	Fri 5/5/17	60 calendar days
Begin regular sale price for all JPay tablets	1 day	Fri 5/5/17	Fri 5/5/17	ongoing
Implementation of Vendor Catalogs	67 days	Wed 2/15/17	Thu 5/18/17	
Kick-off meeting	1 day	Wed 2/15/17	Wed 2/15/17	
Formulate vendor requirements and file specifications	9 days	Thu 2/16/17	Tue 2/28/17	
Confirm pilot details for Chippewa & Cotton Site	10 days	Wed 3/1/17	Tue 3/14/17	
Activate phone time funding (Chippewa & Cotton)	10 days	Wed 3/15/17	Tue 3/28/17	
Activate phone time funding (all facilities)	1 day	Wed 3/29/17	Wed 3/29/17	
Activate Mike's Better Shoes purchasing (Chippewa & Cotton)	13 days	Mon 5/1/17	Wed 5/17/17	
Activate Mike's Better Shoes purchasing (all facilities)	1 day	Thu 5/18/17	Thu 5/18/17	
Repeat activation process with remaining catalog vendors	10 days	Mon 4/24/17	Fri 5/5/17	
Inmate Kiosk Onsite Coverage Upgrade	178 days	Wed 2/1/17	Fri 10/6/17	
Confirm resources and obtain clearances for implementation personnel	10 days	Wed 2/1/17	Tue 2/14/17	
Conduct pre-installation site visits	10 days	Mon 2/20/17	Fri 3/3/17	
Obtain facilities' approval of additional kiosks locations	6 days	Fri 3/3/17	Fri 3/10/17	
Review and accept installation scope of work	5 days	Mon 3/13/17	Fri 3/17/17	
Finalize vendor pricing	10 days	Mon 3/20/17	Fri 3/31/17	
Submit detailed rollout timeline	1 day	Mon 4/3/17	Mon 4/3/17	
Procure and ship equipment	10 days	Wed 4/5/17	Tue 4/18/17	
Vendor Install additional kiosks at all facilities	130 days	Mon 4/10/17	Fri 10/6/17	
Post Implementation Review	12 days	Mon 10/9/17	Tue 10/24/17	
Facility sign-off of completed kiosks additions	2 days	Mon 10/9/17	Tue 10/10/17	
Onsite post install - Site visits	6 days	Mon 10/9/17	Mon 10/16/17	
Milestone Accomplishment review	3 days	Tue 10/17/17	Thu 10/19/17	
Action Item/Compliance & Closeout Review	3 days	Fri 10/20/17	Tue 10/24/17	



- B. Post-Implementation Review** – The Contractor must conduct a post-implementation survey process to provide an internal evaluation and assessment of the program implementation approximately 90 days after the actual services contract start date. The post-implementation survey must include items relative to all important start up activities and compliance with key Contract provisions, and mutually agreed by the MDOC CCI and the Contractor. The Contractor's survey team must visit each geographic region and review accomplishments, opportunities for improvement and compliance with the startup / transition checklist and key Contract provisions. Survey results must be submitted to the MDOC CCI.
- C. Contract Closeout Plan** – The Contractor must provide a closeout plan for the closure of the Contract due to Contract expiration or termination. The plan must include, but is not limited to, MDOC prisoner data and records.
- a. **End of Contract Data Conversion Responsibility:** At the expiration or termination of this Contract, the Contractor must work with State to ensure the transitional and operational continuity of the services under this Contract. The Contractor agrees to assist the State for a reasonable period of time that in no event will exceed 90 days after the expiration or termination date of this Contract and to assign key personnel as needed to assist in the transition. Key system staff will be available to ensure data integrity and system continuity (also see section 2.170).

1.042 Reports

The Contractor must have the data for the following monthly reports available for the MDOC to access within 20 calendar days from the close of the previous month, unless specified otherwise below. These reports must be available online or sent via a secure Contractor network that is accessible by approved MDOC staff. The MDOC requires the Contractor to modify existing reports as requested within seven days of the request and create new reports within 14 days unless otherwise approved by the MDOC CCI.

The Contractor must work with the MDOC to develop and provide reports based on MDOC requirements. Each report must meet all content and functional requirements of the MDOC. Examples of the required reports are as follows:

- a. Itemized purchases. (Data must be available daily.)
- b. All report information must be available and sortable by mail, order number, customer name, customer ID#, facility, item #, vendor name, prisoner name and ID number, date when orders were shipped, etc..
- c. Sales commission reports.
- d. Service compliance reports.
- e. Annual and monthly usage or sales reports by facility.
- f. Security reports for investigations.
- g. Refund/returns/rejections.
- h. Sales tax imposed, collected, and remitted.
- i. Prisoner Correspondence responses.
- j. Prisoner Restriction list.
- k. Equipment repair/replacement information to include facility, equipment location, date repair call was placed, date repair was completed, cause of repair/replacement.
- l. Monthly number of catalog orders timeframes between funds transferred and orders placed
- m. Equipment repair/replacement information to include facility, equipment location, date repair call was placed, date repair was completed, cause of repair/replacement.
- n. Other reports as requested by the MDOC CCI.



1. The Contractor must ensure all reports are able to be sorted by prisoner name, prisoner ID number, order number, date range, and facility.
2. The Contractor must ensure that each report provides a total and itemized listing.
3. The Contractor must provide reports for any security breach or misuse of the system by prisoners or the prisoners' friends and family members.

1.050 Acceptance

1.051 Criteria

The following criteria will be used by the State to determine Acceptance of the Services or Deliverables provided under this Contract:

1. The MDOC will consider the Transition Plan milestones accomplished upon MDOC acceptance and written approval of each individual milestone consistent with MDOC Policy and Procedure and as outlined in the requirements of the Contract. The Contractor must submit to the MDOC CCI their revised, detailed Transition Plan, including timing of milestones, no later than 10 days after the Contract award date. The MDOC CCI will have ten business days to review and make changes and recommendations to the plan, including timing of milestones. The Contractor will then have five business days to finalize the plan. The final plan must be approved by the MDOC CCI within 30 calendar days prior to the Contract start date. The Transition Plan milestones include all of the following items (the Contractor must submit detailed, final versions for MDOC approval).
2. Access to Contractor system milestone will be accomplished when MDOC is able to access the electronic system for inquiry and for functionality testing.
3. Prisoner electronic messaging via kiosks milestone will be accomplished when each housing unit has a minimum of one kiosk per every 100 prisoners, or a minimum of two kiosks, functioning for general population prisoners and an MDOC approved method is functioning for all other prisoners and friends and family members. The kiosks will be tested for functionality required in the Contract before this milestone is accepted.
4. Catalog Order milestone will be accomplished when a system is in place for prisoners to place catalog orders to multiple MDOC approved vendors via the housing unit kiosk and funds are transferred for prisoner purchases between the MDOC prisoner accounting system and the Contractor. The system will be tested for functionality required in this Contract before this milestone is accepted.
5. Digital media milestone will be accomplished when a system is in place for prisoners to purchase digital media players and music downloads. The system will be tested for functionality required in this Contract before this milestone is accepted.
6. Reports milestone will be accomplished when the Contractor submits a sample of each report required as part of the Contract to the MDOC and receives written approval from the MDOC.
7. Customer service milestone will be accomplished when the customer service number is provided and tested and when a kiosk repair process is submitted and approved by the MDOC.
8. Staffing plan milestone will be accomplished when the Contractor provides the staffing plan and organization chart to the MDOC.
9. The Contractor communication with prisoners and friends/family milestone will be accomplished when a written process is submitted and approved by the MDOC.



10. Training milestone will be accomplished when the Contractor provides training to at least one MDOC person per facility, designated MDOC Business Office staff and designated MDOC Central Office staff, on the equipment operation, ordering, receiving, shipping, and reporting processes.

1.052 Reserve

1.060 Pricing

For authorized Services and Price List, see Attachment A.

The Contractor's out-of-pocket expenses are not reimbursable by the State.

1.062 Price Term

Prices quoted are firm for the entire length of the Contract. There is no cost to the State of Michigan.

1.063 Reserve

1.064 Reserve

1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to this Contract

1. If all functions of the Contractor system are not available on the actual services contract start date, the liquidated damages in Section 2.243 may be applied unless otherwise approved by the MDOC CCI.
2. The Contractor must have a program that subjects all employees, independent contractors, Contractor partners, and subcontractors filling full or part-time positions to pre-employment and for cause alcohol and drug testing. Drug testing must screen for all controlled substances as identified in Article 7 of the Michigan Public Health Code, 1978 Public Act 368, as amended, being MCL 333.7101 *et seq.*
3. The MDOC reserves the right to deny access to any facility to any Contractor(s)/subcontractor(s) staff member or subcontractor who fails to comply with any applicable State, Federal or local law, ordinance or regulation or whose presence may compromise the security of the facility, its members, or staff.
4. The Contractor must perform start up activities necessary to enable the Contractor to begin performance of Contract activities at the Contract start date. The Contractor acknowledges that no compensation will be paid to the Contractor during the startup period.
5. The Contractor must comply with all State, Federal, and local laws and regulations; applicable consent decrees, court orders and Michigan Attorney General opinions, Performance Audits and CARF standards, MDOC Policy Directives, Director's Office Memorandums, and Operating Procedures. Current versions all MDOC documents above can be requested from the MDOC CCI.
6. **Prison Rape Elimination Act (PREA) of 2003**
Public Law 108-79, Sept. 4, 2003
 The Contractor must comply with the Federal Prison Rape Elimination Act, 28 CFR Part 115. Overfamiliarity, establishing a friendship, mutual attraction or intimate relationship with a prisoner, is strictly prohibited. The Contractor must immediately refer any allegations of sexual abuse or sexual harassment made by a prisoner to the MDOC staff. The Contractor shall ensure compliance with the National Standards to Prevent, Detect and Respond to Prison Rape, effective August 20, 2012 at <http://www.gpo.gov/fdsys/pkg/FR-2012-06-20/pdf/2012-12427.pdf>. See attached PREA standards (Attachment G). Overfamiliarity with prisoners is strictly prohibited. If the Contractor does not abide by these standards, it is considered a breach of Contract.



Any and all contractors, or subcontractors that may have contact with offenders in accordance with PREA §115.32 must complete PREA training *Program A: Correctional Facilities Administration (Document will be provided to the Contractor and sub-contractors upon execution of Contract, future revised copies will be provided to Contractor by the Contract Manager/Contract Compliance Inspector or designee in a timely manner)* prior to entrance in any MDOC facility. Upon completion, the Contractor shall submit a signed memorandum to the Contract Manager/Contract Compliance Inspector or designee documenting who completed the training and on what date.

The Contractor or subcontractors who observes sexual abuse/sexual harassment or receives an allegation of sexual abuse /sexual harassment, must report it to an MDOC supervisor immediately, the same day as the allegation or observation was made.

7. All drug, alcohol and tobacco products are prohibited at all correctional facilities. This includes vendors/drivers who will be prohibited from bringing these products to these locations. Reasonable suspicion testing will be required by the Contractor(s) and subcontractor(s) if there is suspicion that the Contracted employee has violated the prohibited drug and alcohol statement. If MDOC has reasonable suspicion to believe that any employee of the Contractor or subcontractor is under the influence of drugs or alcohol during the course of work under the Contract, he or she will be subject to immediate removal from the premises. Any employee with a positive result from any drug or alcohol test will be prohibited from working under the Contract to provide services to the MDOC.
8. All cellular devices are prohibited from all correctional facilities.
9. Correctional facilities will provide a lock box for cellular devices and personal tobacco products in the vehicle sallyport. Contractor(s) that come into the Administration Building of a correctional facility will need to secure their cellular devices and personal tobacco products in their vehicle prior to entrance. If the Contractor arrives with such products, the Contractor will be requested to return the item to their vehicle. Delivery vehicles that carry tobacco products for other organizations will not be allowed to bring such products into correctional facilities.
10. If the Contractor's vehicle is equipped with video equipment, the Contractor must have locking capability of interior and exterior facing lenses. Video equipment cannot be used within correctional facilities.
11. Weapons, fireworks and explosives are prohibited from all State facilities.
12. The Contractor must collect and submit appropriate sales tax to the Michigan Department of Treasury for all prisoner purchases that meet the requirements of Michigan Tax law.
13. The MDOC reserves the right to cancel the Contract if the Contractor fails to follow the requirements of Michigan Sales Tax Laws and related statutes regarding registration and certification and collection of sales and use tax.
14. At the completion of the Contract, all files and records are the property of MDOC and are immediately turned over to MDOC.
15. The Contractor must provide written notification to the CCI of any system upgrades, software upgrades and maintenance that may impact the Contractor's system or services, at a minimum 60 days prior to implementation.



16. The Contractor must require all its employees working inside a MDOC correctional facility, to read and sign the MDOC Vendor Handbook (Attachment I). The purpose of the MDOC Vendor Handbook is to provide contracts with general information regarding basic requirements of working within the Michigan Department of Corrections, provide notice of work rules and consequences of rule violations. The awarded Contractor must provide copies of each signed Employee Acknowledgment to the CCI at the completion of the employee orientation.
17. If not already addressed, the Contractor must work with the State of Michigan to complete a DTMB-170 Project Security Plan and Assessments as directed by the State.
18. The Contractor must have processes in place to detect and prevent illegal commerce in the service(s) it provides (i.e. use of Greendot cards, etc.).
19. The Contractor must provide a completed and signed "Attestation of Compliance" to the MDOC annually.
20. The Contractor agrees to provide State specific data elements to a third party at the request of State-MDOC.



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of three years, 9 months. The Contract will be effective February 1, 2017 through October 31, 2020. Although the contract effective date is February 1, 2017, the Contractor will not be assessed service level agreements until after October 31, 2017. This period of time will encompass services rendered / transition. February 1, 2017 the Contractor will start providing music download services, music players, and e-messaging services. The Contractor must introduce vendor catalog ordering through their kiosks no later than October 31, 2017. The MDOC reserves the right to revise the transition period based on the number of awarded contractors or other factors. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in section 2.150) of the Contract, unless extended under the Contract Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued unless terminated earlier by the State.

2.002 Options to Renew

The Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to five additional one year periods.

2.003 Legal Effect

Contractor must show acceptance of the Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor must not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under the Contract, until Contractor is notified in writing that the Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.004 Attachments & Exhibits

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing the Contract, are incorporated in their entirety and form part of the Contract.

2.005 Reserve

2.006 Order of Precedence

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract, which may be modified or amended only by a formal Contract amendment.



2.007 Headings

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

2.008 Form, Function & Utility

If the Contract is for use of more than one State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.009 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract and, if one (1) or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

2.010 Consents and Approvals

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.020 Contract Administration

2.021 Issuing Office

The Contract is issued by the Department of Technology Management and Budget, DTMB-Procurement and MDOC (collectively, including all other relevant State of Michigan departments and agencies, the "State"). DTMB-Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. DTMB-Procurement **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contractor Administrator within DTMB-Procurement for the Contract is:

Brandon Samuel, Buyer Specialist
Procurement
Department of Technology Management and Budget
Constitution Hall, 1st Floor
PO Box 30026
Lansing, MI 48909
samuelb@michigan.gov
517-284-7025

2.022 Contract Manager/Contract Compliance Inspector (CCI)

After DTMB-Procurement receives the properly executed Contract, it is anticipated that the Chief Procurement Officer, DTMB-Procurement, in consultation with MDOC, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its



term. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DTMB Procurement.** The CCI for the Contract is:

Kevin Weissenborn, Contract Manager
 Department of Corrections
 206 E. Michigan Ave.
 Lansing, MI 48933
Weissenbornk@michigan.gov
 (517) 373-9550

2.023 MDOC Project Managers

The following individuals will oversee the project:

Bernard Scott, Administrator Assistant for CFA Operations
 Department of Corrections
 206 E. Michigan Ave.
 Lansing, MI 48933
Scottb4@michigan.gov
 (517) 899-5497

Cindy Dodds-Dugan, CFA Kinross Office Business Manager
 Department of Corrections
 508 West M-80
 Kincheloe, MI 49788
Dodds-duganc@michigan.gov
 (906) 440-4199

Eames Groenleer, CFA Jackson Office Business Manager
 Department of Corrections
 4000 Cooper Street
 Jackson, MI 49201
Groenleere@michigan.gov
 (517) 780-6076

2.024 Change Requests

The State reserves the right to request, from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a "Contract Change Notice").



(b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the DTMB-Procurement.

(c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor's contact as noted on the cover page of the contract, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

Either party may change its address where notices are to be sent by giving notice according to this Section.

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the Contract. Contractor may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors is an employee, agent or servant of the State. Contractor is solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.028 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties must not unreasonably delay, condition, or withhold the giving of any consent, decision, or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.029 Assignments

(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one (1) entity continues.



(c) If the Contractor intends to assign the Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions

2.031 MiDEAL Administrative Fee and Reporting.

Contractor must pay a MiDEAL administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the MiDEAL members, State of Michigan employees and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made by check payable to the State of Michigan and mailed to:

Department of Technology, Management and Budget
Financial Services – Cashier Unit
Lewis Cass Building
320 South Walnut St.
P.O. Box 30681
Lansing, MI 48909

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to DTMB-Procurement.

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

2.032 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

2.033 Contract Distribution

DTMB-Procurement retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by DTMB-Procurement.

2.034 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services.

2.035 Website Incorporation

The State is not bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

2.036 Future Bidding Preclusion

Contractor acknowledges that, to the extent the Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP

**2.037 Freedom of Information**

All information in any proposal submitted to the State by Contractor and the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").

2.038 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under the Contract must provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions**2.041 Fixed Prices for Services/Deliverables**

Each Statement of Work under the Contract must specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables.

2.042 Reserve**2.043 Services/Deliverables Covered**

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under the Contract, the State, prisoners or prisoners' family and friends must not be obligated to pay any amounts in addition to the charges specified in the Contract.

2.044 Invoicing and Payment – In General

The Contractor must ensure the sales commission provided to MDOC is received by the MDOC within 30 calendar days of the close of the month. The amount for the sales commission for the prisoner service must be specified in the Contract.

The MDOC will review the monthly sales report to determine if the appropriate commission percentage has been remitted to MDOC within 30 calendar days of the close of each month.

A penalty of \$500.00 plus interest may be assessed for each day commissions are not received within 30 calendar days of the close of month. Continued untimely submission may be considered a breach of contract.

Interest Calculation

The daily penalty amount (undeposited funds) will be calculated as follows:

$$\begin{array}{rcl}
 & \text{Value of Undeposited Funds} & \\
 \times & \text{Treasury Bill three-month "ask yield" as stated in the last Friday of each month's Wall Street Journal} & \\
 = & \text{Interest Penalty} &
 \end{array}$$

2.045 Reserve**2.046 Reserve****2.047 Reserve****2.048 Reserve**



2.050 Taxes

2.051 Employment Taxes

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining “two (2) or more trades or businesses under common control” the term “organization” means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management

2.061 Contractor Personnel Qualifications

All persons assigned by Contractor to the performance of Services under the Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of the Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for the Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

- (a) The Contractor must provide the CCI with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. If the State disapproves an individual, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor’s removal of Key Personnel without the prior written consent of the State is an unauthorized removal (“Unauthorized Removal”). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel’s employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State



must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract.

(e) The Contractor must notify the CCI and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

(f) Liquidated damages may be assessed by the State for Unauthorized Removal as provided in Section 2.243, Liquidated Damages.

2.063 Re-assignment of Personnel at the State's Request

The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract must perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel must, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.065 Contractor Identification

Contractor employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.066 Cooperation with Third Parties

Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. The Contractor must provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities.

2.067 Contractor Return of State Equipment/Resources

The Contractor must return to the State any State-furnished equipment, facilities, and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.068 Contract Management Responsibilities

The Contractor must assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable.



The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

2.070 Subcontracting by Contractor

2.071 Contractor Full Responsibility

Contractor has full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under the Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to Delegation

Contractor must not delegate any duties under the Contract to a Subcontractor unless the DTMB-Procurement has given written consent to such delegation. The State reserves the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. Replacement Subcontractor(s) for the removed Subcontractor must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Subcontractor Bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under the Contract will not relieve Contractor of any obligations or performance required under the Contract.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor must flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.

2.075 Competitive Selection

The Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.080 State Responsibilities

2.081 Equipment

The State must provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

**2.082 Facilities**

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's equipment to perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and, unless agreed otherwise by the parties in writing, must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor must not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security**2.091 Background Checks**

On a case-by-case basis, the State may investigate the Contractor's and Subcontractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and the Law Enforcement Information Network check (LEIN), and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor and Subcontractor personnel may be required to complete and submit an RI-8 Fingerprint Card for Michigan Criminal History information or an FD-258 Fingerprint Card for a FBI Identification Record request. Any request for background checks will be initiated by the MDOC and will be reasonably related to the type of work requested.

2.100 Confidentiality**2.101 Confidentiality**

Contractor and the State each acknowledge that the other possesses, and will continue to possess, confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under the Contract, is marked as confidential, proprietary, or with a similar designation by the State. "Confidential Information" excludes any information (including the Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information

The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the



Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

Promptly upon termination or cancellation of the Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.

2.103 PCI Data Security Standard

- a. Undertaking by Contractor. Contractors that process, transmit, store or affect the security of credit/debit cardholder data, must adhere to the Payment Card Industry Data Security Standard (PCI DSS). The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.
- b. Cooperation to Notify of Breach. The Contractor must notify the State's Contract Administrator, within 48 hours of discovery, of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the card associations (e.g. Visa, MasterCard, and Discover) and state acquirer representative(s), or a PCI approved third party, to conduct a thorough security review. The review must validate compliance with the PCI Data Security Standard for protecting cardholder data. The Contractor must provide, at the request of the State, the results of such third party security review. At the State's sole discretion, the State may perform its own security review, either by itself or through a PCI approved third party.
- c. Responsibilities for Costs Incurred. The Contractor is responsible for all costs incurred as the result of the breach. Costs may include, but are not limited to, fines/fees for non-compliance, card reissuance, credit monitoring, and any costs associated with a card association, PCI approved third party, or State initiated security review. Without limiting Contractor's obligations of indemnification as further described in this Contract, Contractor must indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the breach.
- d. Disposing of Cardholder Data. The Contractor must dispose of cardholder data when it is no longer needed in compliance with PCI DSS policy. The Contractor must continue to treat cardholder data as confidential upon contract termination.
- e. Audit by Contractor. The Contractor must provide the State's Contract Administrator with an annual Attestation of Compliance or a Report on Compliance showing the contractor is in compliance with the PCI Data Security Standard. The Contractor must notify the State's Contract Administrator of all failures to comply with the PCI Data Security Standard.

2.104 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

**2.105 No Implied Rights**

Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.106 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 72 hours after becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.107 Respective Obligations

The parties' respective obligations under this Section must survive the termination or expiration of the Contract for any reason.

2.110 Records and Inspections**2.111 Inspection of Work Performed**

The State's authorized representatives have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed at any time. The Contractor must provide reasonable assistance for the State's representatives during inspections.

2.112 Retention of Records

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of 7 years after the Contractor performs any work under this Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.113 Examination of Records

(a) The State, upon 10 days notice to the Contractor, may examine and copy any of the Contractor's records that relate to this Contract any time during the Audit Period. The State does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this Contract.

(b) In addition to the rights conferred upon the State in paragraph (a) of this section and in accordance with MCL 18.1470, DTMB or its designee may audit the Contractor to verify compliance with the Contract. The financial and accounting records associated with the Contract shall be made available to DTMB or its designee and the auditor general, upon request, during the term of the Contract and any extension of the Contract and for 3 years after the later of the expiration date or final payment under the Contract.

2.114 Audit Resolution

If necessary, the Contractor and the State will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 days after receiving the report, unless the report specifies a shorter response time. The Contractor and the State must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

**2.115 Errors**

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next monthly statement and in subsequent statements until the amount is resolved. However, a credit or debit may not be carried forward for more than four statements or beyond the termination of the Contract. If a balance remains after four statements, the remaining amount will be due as a payment or refund within 45 days of the last quarterly statement on which the balance appeared or upon termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs. If the difference is less than 10%, repeated shortages or evidence of ongoing shortages, the State will require the Contractor to pay all reasonable costs of the audit.

2.120 Warranties**2.121 Warranties and Representations**

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the Contract.

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under the Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.

(h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to DTMB-Procurement.

**2.122 Warranty of Merchantability**

Goods provided by Contractor under this agreement must be merchantable. All goods provided under the Contract must be of good quality within the description given by the State, must be fit for their ordinary purpose, must be adequately contained and packaged within the description given by the State, must conform to the agreed upon specifications, and must conform to the affirmations of fact made by the Contractor or on the container or label.

2.123 Warranty of Fitness for a Particular Purpose

When the Contractor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the Contractor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

2.124 Warranty of Title

Contractor must, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor must be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under the Contract, must be delivered free of any rightful claim of any third person by of infringement or the like.

2.125 Equipment Warranty

To the extent Contractor is responsible under the Contract for maintaining equipment/system(s), Contractor must maintain the equipment/system(s) in good operating condition and must undertake all repairs and preventive maintenance according to the applicable manufacturer's recommendations for the period specified in the Contract.

The Contractor represents and warrants that the equipment/system(s) are in good operating condition and operate and perform to the requirements and other standards of performance contained in the Contract, when installed, at the time of Final Acceptance by the State, and for a period of one year commencing upon the first day following Final Acceptance.

Within 48 hours of notification from the State, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor must provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Contractor.

The Contractor agrees that all warranty service it provides under the Contract must be performed by Original Equipment Manufacturer (OEM) trained, certified and authorized technicians.

The Contractor is the sole point of contact for warranty service. The Contractor warrants that it will pass through to the State any warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

All warranty work must be performed on the State of Michigan worksite(s).

2.126 Equipment to be New

If applicable, all equipment provided under the Contract by Contractor must be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.



2.127 Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, is considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items must remain consistent for the term of the Contract, unless DTMB-Procurement has approved a change order pursuant to **Section 2.024**.

2.128 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of the Contract.

2.130 Insurance

2.131 Liability Insurance

For the purpose of this Section, "State" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

- (a) The Contractor must provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that may arise out of, or result from, or are alleged to arise out of, or result from, the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.
- (b) The Contractor waives all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.
- (c) All insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.
- (d) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.
- (e) Unless the State approves otherwise, any insurer must have an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.
- (f) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.
- (g) The Contractor must maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Contract.
- (h) The Contractor must provide, within five business days, written notice to the Director of DTMB-Procurement if any policy required under this section is cancelled. The notice must include the applicable Contract or Purchase Order number.
- (i) The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the Contractor to any indemnified party or other persons.
- (j) The Contractor is responsible for the payment of all deductibles.
- (k) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at least 30 days' notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.
- (l) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.
- (m) The Contractor is required to pay for and provide the type and amount of insurance checked ☒ below:



☒ **(i) Commercial General Liability**

Minimal Limits:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations;
 \$2,000,000 Products/Completed Operations Aggregate Limit;
 \$1,000,000 Personal & Advertising Injury Limit; and
 \$1,000,000 Each Occurrence Limit.

Deductible maximum:

\$50,000 Each Occurrence

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that the insurance policy contains a waiver of subrogation by the insurance company.

☒ **(ii) Umbrella or Excess Liability**

Minimal Limits:

\$5,000,000.00 General Aggregate

Additional Requirements:

Umbrella or Excess Liability limits must at least apply to the insurance required in (i), General Commercial Liability. The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☒ **(iii) Motor Vehicle**

Minimal Limits:

If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.

☐ **(iv) Hired and Non-Owned Motor Vehicle**

Minimal Limits:

\$1,000,000 Per Accident

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☒ **(v) Workers' Compensation Insurance**

Minimal Limits:

The Contractor must provide Workers' Compensation coverage according to applicable laws governing work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, the Contractor must provide proof of an approved self-insured authority by the jurisdiction of domicile.

For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Additional Requirements:

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable. Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

☒ **(vi) Employers Liability**Minimal Limits:

\$100,000 Each Incident;
\$100,000 Each Employee by Disease
\$500,000 Aggregate Disease

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

☒ **(vii) Employee Fidelity (Crime)**Minimal Limits:

\$1,000,000 Employee Theft Per Loss

Deductible Maximum:

\$50,000 Per Loss

Additional Requirements:

Insurance must cover Forgery and Alteration, Theft of Money and Securities, Robbery and Safe Burglary, Computer Fraud, Funds Transfer Fraud, Money Order and Counterfeit Currency.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as Loss Payees on the certificate.

☒ **(viii) Professional Liability (Errors and Omissions)**Minimal Limits:

\$5,000,000 Each Occurrence
\$5,000,000 Annual Aggregate

Deductible Maximum:

\$100,000 Per Loss

☐ **(ix) Medical Malpractice**Minimal Limits:

(Small Provider)\$200,000 Each Occurrence
\$600,000 Annual Aggregate

(Large Provider)\$1,000,000 Each Occurrence
\$3,000,000 Annual Aggregate

Deductible Maximum:

\$5,000 Each Occurrence



☒ **(x) Cyber Liability**

Minimal Limits:

\$1,000,000 Each Occurrence
\$1,000,000 Annual Aggregate

Additional Requirements:

Insurance should cover (a) unauthorized acquisition, access, use, physical taking, identity theft, mysterious disappearance, release, distribution or disclosures of personal and corporate information; (b) Transmitting or receiving malicious code via the insured's computer system; (c) Denial of service attacks or the inability to access websites or computer systems.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

☐ **(xi) Property Insurance**

Property Insurance covering any loss or damage to the State-owned office space used by Contractor for any reason under this Contract, and the State-owned equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The State must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

Except where the State has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.131, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

2.133 Certificates of Insurance

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents are listed as additional insureds as required. The Contractor must provide DTMB-Procurement with all applicable certificates of insurance verifying insurance coverage or providing, if approved, satisfactory evidence of self-insurance as required in Section 2.131, Liability Insurance. Each certificate must be on the standard "Accord" form or equivalent and MUST IDENTIFY THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER.

2.140 Indemnification

2.141 General Indemnification

The Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of the Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its Subcontractors, or by anyone else for whose acts any of them may be liable.

2.142 Code Indemnification

The Contractor must indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

**2.143 Employee Indemnification**

In any claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its Subcontractors, the indemnification obligation under the Contract must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its Subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

2.144 Patent/Copyright Infringement Indemnification

The Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its Subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under the Contract.

2.145 Continuation of Indemnification Obligations

The Contractor's duty to indemnify under this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.146 Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under the Contract.

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After



notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under the Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses, including attorney fees.

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, then the State must provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

(a) The State may terminate the Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under the Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If the Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by the Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under the Contract.



(c) If the State chooses to partially terminate the Contract for cause, charges payable under the Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates the Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in the Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate the Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate the Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate the Contract in part, the charges payable under the Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

(a) Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State must terminate the Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under the Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates the Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available.

2.155 Termination for Criminal Conviction

The State may terminate the Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

**2.156 Termination for Approvals Rescinded**

The State may terminate the Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State must pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

2.157 Rights and Obligations upon Termination

(a) If the State terminates the Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from the Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates the Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under the Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under the Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for Services and Deliverables provided under the Contract, and may further pursue completion of the Services/Deliverables under the Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

Any termination of the Contract or any Statement of Work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

2.160 Reserved**2.170 Transition Responsibilities****2.171 Contractor Transition Responsibilities**

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 90 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

**2.172 Contractor Personnel Transition**

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's Subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's Subcontractors or vendors. Contractor must notify all of Contractor's subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition

The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under the Contract. The Contractor must provide the State with asset management data generated from the inception of the Contract through the date on which the Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

2.174 Contractor Software Transition

The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under the Contract. This must include any documentation being used by the Contractor to perform the Services under the Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates agreed upon by the State. The Contractor must prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

2.180 Stop Work**2.181 Stop Work Orders**

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

**2.182 Cancellation or Expiration of Stop Work Order**

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment must conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. The State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution**2.191 In General**

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in the Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Procurement, DTMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 calendar days, the Director of Procurement, DTMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.



(b) This Section must not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

2.193 Injunctive Relief

A claim between the State and the Contractor is not subject to the provisions of Section 2.192, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Contractor must comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101 et seq., as amended, and all applicable federal, State and local fair employment practices and equal opportunity laws as amended. Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., as amended, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., as amended, and any breach of this provision may be regarded as a material breach of the Contract.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor and any Subcontractor must comply with all applicable state and federal laws.

2.204 Prevailing Wage

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of the Contract in privity of contract with the Contractor must not be less than the wage rates and fringe benefits established by the Michigan Department of Licensing and Regulatory Affairs, Wage and Hour Division, schedule of occupational



classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor must include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors and all persons involved with the performance of the Contract in privity of contract with the Contractor must keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Licensing and Regulatory Affairs, the office responsible for enforcement of the wage rates and fringe benefits. The Contractor must keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with the Contract. This record must be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted must also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

2.210 Governing Law

2.211 Governing Law

The Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.212 Compliance with Laws

Contractor must comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

2.213 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan and the Contractor expressly consents to personal jurisdiction in Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue. Contractor agrees to appoint agents in the State of Michigan to receive service of process. .

2.220 Limitation of Liability

2.221 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely



affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of the Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
 - (a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and
 - (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor must make the following notifications in writing:

- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DTMB-Procurement.
- (2) Contractor must also notify DTMB Procurement within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
- (3) Contractor must also notify DTMB Procurement within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

Contractor and/or all Subcontractors involved in the performance of the Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of the Contract.

2.233 Bankruptcy and Insolvency

The State may, without prejudice to any other right or remedy, terminate the Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under the Contract.

The Contractor must place appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.



2.240 Performance

2.241 Time of Performance

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreements (SLAs)

- (a) SLAs will be completed with the following operational considerations:
- (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
 - (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.
 - (iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
 - (iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:
 1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
 2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.
- (b) Chronic Failure for any Service(s) is defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service must not affect any tiered pricing levels.
- (c) Root Cause Analysis must be performed on any business critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor must provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.
- (d) All decimals must be rounded to two decimal places, with five and greater rounding up and four and less rounding down, unless otherwise specified.



2.243 Reserved

2.244 Excusable Failure

Neither party will be liable for any default, damage, or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. But the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables

2.251 Delivery Responsibilities

Unless otherwise specified by the State within an individual order, the following must be applicable to all orders issued under the Contract.

(a) Shipment responsibilities - Services performed/Deliverables provided under the Contract must be delivered "F.O.B. Destination, within Government Premises." The Contractor must have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates must be specified on the individual purchase order.



(b) Delivery locations - Services must be performed/Deliverables must be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.

(c) Damage Disputes - At the time of delivery to State Locations, the State must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection

2.252 Delivery of Deliverables

Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables must be completed and delivered for State review and written approval and, where applicable, installed according to the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.253 Testing

(a) Before delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor must first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and conforms with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor must certify to the State that (1) it has performed the quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during the quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

(b) If a Deliverable includes installation at a State Location, then Contractor must (1) perform any applicable testing, (2) correct all material deficiencies discovered during the quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State is entitled to observe or otherwise participate in testing.

2.254 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, according to the following procedures. Formal approval by the State requires the State to confirm in writing that the Deliverable meets its specifications. Formal approval may include the successful completion of Testing as applicable in **Section 2.253**, to be led by the State with the support and assistance of Contractor. The approval process will be facilitated by ongoing consultation between the parties, inspection of interim and intermediate Deliverables and collaboration on key decisions.

(b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State



receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor according to **Section 2.253**.

(d) The State must approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.

(e) If, after three opportunities (the original and two (2) repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

2.255 Process for Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default five Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.256 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 Business Days for Services). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Services (or at the State's election, after approval of the Service). If the State delivers to the Contractor a notice of deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts must be made at no additional charge. Upon



implementation of a corrected Service from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

2.257 Process for Approval of Physical Deliverables

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 continuous Business Days for a Physical Deliverable). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State delivers to the Contractor a notice of deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.258 Final Acceptance

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251-2.257**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

2.260 Ownership

2.261 Ownership of Work Product by State

The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents, or other proprietary rights in the Deliverables.

2.262 Vesting of Rights

With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

2.263 Rights in Data

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.



(b) The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Contractor for any purpose. The State must not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 Ownership of Materials

The State and the Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

2.270 State Standards

2.271 Existing Technology Standards

The Contractor must adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dmb/0,4568,7-150-56355-108233--,00.html>.

2.272 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see http://www.michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.273 Systems Changes

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the Project Manager. Any changes Contractor makes to State systems with the State's approval must be done according to applicable State procedures, including security, access, and configuration management procedures.

2.274 Reserved

2.280 Extended Purchasing Program

The Contract may be extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Upon written agreement between the State and Contractor, this Contract may also be extended to: (a) State of Michigan employees and (b) other states (including governmental subdivisions and authorized entities).

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.



2.290 Environmental Provision

2.291 Environmental Provision

Hazardous Materials:

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation, or disposal of which is regulated by the federal, State, or local laws governing the protection of the public health, natural resources, or the environment. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

(a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State, and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html

Refrigeration and Air Conditioning:

The Contractor must comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to the Contract.



Environmental Performance:

Waste Reduction Program: Contractor must establish a program to promote cost-effective waste reduction in all operations and facilities covered by the Contract. The Contractor's programs must comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

2.300 Other Provisions

2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials

Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

"Forced or indentured child labor" means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.



Attachment A, Pricing

Incoming and Outgoing Electronic Mail

The following are costs for the messaging service to be paid by prisoners or Friends and Family.

Note: One typed page of text, attachment, or photo is equivalent to one electronic stamp

Stamp Pricing	Total Messages per package	Price Per Message	Characters Per Message	PBF Commission Per Message
\$5.00	20	\$0.25	5000	\$0.05
\$10.00	50	\$0.20	5000	\$0.05
\$20.00	100	\$0.20	5000	\$0.05

Message(per page) Print Cost to Prisoner	PBF Commission	Photo Copy Cost to Prisoner (Black and White)	PBF Commission	Photo Copy Cost to Prisoner (Color)	PBF Commission
\$0.10	\$0.05	\$0.10	\$0.05	\$0.50	\$0.25

Vendor Catalog Order Purchases

Processing Catalog Orders for Prisoners	
Per Order Cost to Prisoner	PBF Commission per Order
\$0.50	\$0.10



Digital Media Fees

The following are prisoner costs for the Electronic Media Services:

Item	Cost to Prisoner Per Item	PBF Commission
JP5 mini player or other hardware as approved by MDOC	*\$39.99	\$10.00
Song Download	\$1.06 – \$1.99	10%
Mini Album	\$1.99 - \$9.99	10%
Album	\$9.99 - \$39.99	10%
**Game Download	\$1.99 - \$19.99	10%
**eBook Download	\$0.99	10%
**Movie/TV Download	\$1.29 - \$99.99	10%
**News Subscription (monthly)	\$4.99 - \$7.99	10%
Armband with Case	\$7.50	10%
Outlet Adapter	N/A	N/A
Replacement Earbuds	\$2.50	10%
Replacement Screen Protector	\$5.00	10%
Replacement Charger	\$13.99	10%
High Definition Headphones	\$30.00	10%

***\$19.99 for the first 60 days once prisoners are allowed to begin purchasing players. This date will be agreed upon by the MDOC and the Contractor in enough time to give prisoners 30 days notice of the purchasing opportunity.**

****Only allowed per MDOC approval.**

Contractor must provide a free JP5 mini player to all MDOC prisoners owning the JP4 player.

No commission will be paid for free players

Music on JP4 players will be transferred to the JP5 mini at no cost via the kiosk.

Option #1 – For prisoners who own a Keefe player and want to turn it in.

If a prisoner owns a Keefe player and purchases a JPay player in the first 60 days once prisoners are allowed to purchase media player and they turn in a Keefe player, their cost is \$0.00 and JPay will give the prisoner a \$20.00 Credit to the prisoner's media account.

Option #2 – For prisoners who own a Keefe Player and want to keep it.

If a prisoner owns a Keefe player and purchases a JPay player in the first 60 days once prisoners are allowed to purchase media players and the prisoner elects to keep their Keefe player, their cost is \$19.99. There will be \$0.00 credited to the prisoner's media account in this option.

Option #3 - For prisoners who do not currently have a Keefe or J-Pay Player.

If a prisoner does not own a Keefe player and purchases a JPay player the cost is \$19.99 for the first 60 days once prisoners are allowed to purchase media players

Option #4 – For Women Huron Valley (WHV) JP4 owners

Within the first 60 days once prisoners are allowed to purchase media player, they may turn in their JP4 and receive a JP5 player. No music credit is allowed because all of their content is available on the kiosk to download to their new JP5.

After the first 60 days once prisoners are allowed to purchase JPay players, regular established pricing will start.



Attachment B - Michigan Department of Corrections Facilities Map

Michigan Department of Corrections Correctional Facilities Map

As of September 2016



* Includes reception centers

Source: Correctional Facilities Administration



Attachment C
Michigan Department of Corrections
Housing Units and Facility Population

Facility	Number of Housing Units	Facility Population as of 9/16/16
Alger (LMF)	6	878
Baraga (AMF)	8	841
Bellamy Creek (IBC)	11	1799
Earnest C. Brooks (LRF)	6	1226
Carson City (DRF)	15	2154
Central Michigan (STF)	16	2526
Chippewa (URF)	13	2321
Cooper Street (JCS)	11	1724
G. Robert Cotton	18	1787
Charles Egeler (SMN/RGC)	5	985
Gus Harrison (ARF)	14	2326
Richard A Handlon (MTU)	6	1268
Huron Valley Womens (WHV)	14	2214
Ionia Max (ICF)	7	694
Kinross (KCF)	8	1326
Lakeland (LCF)	16	1453
Macomb (MRF)	7	1373
Marquette (MBP)	10	1183
Michigan Reformatory (RMI)	5	1256
Muskegon (MCF)	6	1296
Newberry (NCF)	12	1086
Oaks (ECF)	7	1113
Ojibway (OCF)	7	1115
Parnall (SMT)	5	1668
Pugsley (MPF)	4	1343
Ryan (RRF)/ Detroit Reentry Center (DRC)	11	875
Saginaw (SRF)	7	1460
St. Louis (SLF)	7	1146
Thumb (TCF)	12	1126
West Shoreline (MTF)	8	1272
Woodland (WCC)	11	341

Totals

289

41832

**Attachment D - Service Level Agreements****SLA: VENDOR CATALOG ORDER PROCESSING****Definition and Purpose**

The Contractor must process catalog orders at least once each business day. Receipts are to be batched once each business day and sent to the prisoner accounting system. The Contractor must ensure all orders and funds are transferred to the vendor providing the product or service within two business days.

Indicators/Methodology/Acceptable Standard**Indicator**

1. Prisoners Sales Report
2. Deposit History Report

Methodology

1. Monthly review of the Deposit History and Prisoner Sales Report to determine time frame of funds transfer to prisoners and vendors for the month.
2. Review of Prisoner Complaints/Grievances looking for issues related to processing of the prisoner catalog orders and prisoner deposit receipts.
3. At the end of each month the above documents will be reviewed and a report will be developed that shows the number of orders / deposits and time frame of the orders and the funds that were transferred to vendors.

Acceptable Standard

The Contractor must process orders and transfer funds within two business days. The acceptable standard is 100% compliance

Amount for Failing to Meet Indicator:

A penalty of \$250.00 will be assessed for each day the prisoner orders and funds are not processed and transmitted to vendors.

At the discretion of the State, these charges may be credited toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the State shall be completed within 10 days upon demand.

**SLA: DIGITAL MEDIA PLAYER DELIVERY****Definition and Purpose**

The Contractor must ensure digital media players are shipped to the facilities housing MDOC prisoners within seven business days of the order being received by the Contractor. Any deviation from the shipping requirements must be approved by the Compliance Contract Inspector

Indicators/Methodology/Acceptable Standard**Indicator**

1. Shipping Receipts and logs
2. Approved Shipping Schedule
3. Approved Deviations to the Shipping Schedule

Methodology

1. Monthly review of the Prisoner Shipping Receipts from the shipper to verify the date the order was received at the facility.
2. The shipping receipts will be compared to the order process dates to determine compliance.

Acceptable Standard

The Contractor must ensure digital media players are shipped to the facilities housing MDOC prisoners according to the requirements. Acceptable standard is 100% compliance.

Amount for Failing to Meet Indicator:

A penalty of \$50.00 will be assessed on the first business day after the shipment date has past. The penalty will increase to \$100.00 if not shipped on the second business day after scheduled shipping date. The penalty will increase to \$100.00 per day until the shipment is shipped to the facility. Extenuating circumstances will be reviewed by the Contract Compliance Inspector before the penalties are assessed.

At the discretion of the State, these charges may be credited toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the State shall be completed within 10 days upon demand.

**SLA: REFUNDS/RETURNS****Definition and Purpose**

The Contractor must process prisoner refunds/returns/credits according to the terms of the Contract.

Indicators/Methodology/Acceptable Standard**Indicator**

1. Refund/Return Report

Methodology

1. Monthly review of the return/refund report to determine if returns/refunds to prisoners are processed within two business days of notification.

Acceptable Standard

The Contractor must ensure prisoner and family refunds/returns are processed within two business days. The acceptable standard of compliance is 100%.

Amount for Failing to Meet Indicator:

A penalty of \$50.00 will be assessed daily for each prisoner refund/return that is not processed within two business days. There will be an additional monthly penalty of \$500.00 if the number of returns not processed within two business days in any month is greater than 10% of the return/refund requests.

At the discretion of the State, these charges may be credited toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the State shall be completed within 10 days upon demand.

**SLA: REPORTS****Definition and Purpose**

The Contractor must ensure all reports required in Section 1.042 are provided to the MDOC within 20 calendar days from the close of the previous month.

Indicators/Methodology/Acceptable Standard**Indicator**

1. Required Monthly Reports

Methodology

1. Monthly review of the reports submitted according to Section 1.042 Reports

Acceptable Standard

The Contractor must ensure all reports required in Section 1.042 are provided to MDOC within 20 calendar days from the close of the previous month. The acceptable standard is 100% compliance.

Amount for Failing to Meet Indicator:

A penalty of \$100.00 will be assessed for each month that the required reports from Section 1.042 are not received by the MDOC within 20 calendar days from the close of the previous month. An additional penalty of \$500 will be assessed for each calendar day after the 20th calendar day until the reports are received by the MDOC.

At the discretion of the State, these charges may be credited toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the State shall be completed within 10 days upon demand.

**SLA: CUSTOMER SERVICE****Definition and Purpose**

The Contractor must maintain a customer service department that is available 24/7/365 to answer facility questions regarding prisoner orders, address kiosk issues, and provide other customer services in accordance with the Contract as needed or requested by MDOC staff. Equipment and system issues will be repaired within time frames outlined in the Contract. The Contractor must respond to all prisoner correspondence according to the terms of this Contract.

Indicators/Methodology/Acceptable Standard**Indicator**

1. Service Compliance Reports
2. Equipment Repair Reports
3. Prisoner Grievance and Kite response reports

Methodology

1. Monthly review of the Service Compliance reports related to issue resolution occurs according to the timeframes in the contract related to call back and customer service availability during business hours.
2. Monthly review of the Equipment Repair Reports to ensure repairs or system issues is resolved according to the timeframes in the contract.
3. Review of monthly kiosk repair logs/documentation to determine if kiosks are repaired within 48 hours of request.
4. Facility return call back logs will be maintained to ensure return calls are completed within one hour of documented call.
5. Prisoner Correspondence logs will be maintained to ensure prisoners receive correspondence responses within the time frame outlined in the Contract.
6. For the 10% monthly threshold of kiosk outages the methodology will include a daily count of kiosks that are out of service, this number will be tallied for the month and will be divided by the total number of kiosk days (number of kiosks multiplied by the number of month days), if the percentage is greater than 10% a penalty will be assessed.

Acceptable Standard

The Contractor must ensure customer service is provided according to the terms of the contract. The acceptable standard is 100% compliance.

Amount for Failing to Meet Indicator:

A penalty of \$500.00 will be assessed for each day (24 hour period) a kiosk is not repaired within 48 hours unless an alternative method for kiosk usage is approved by the Contract Compliance Inspector. An additional penalty of \$1,000.00 will be assessed for any kiosk that is not functioning for more than five business days. There will also be a monthly penalty of \$5,000.00 if the number of kiosks breakdowns exceeds 10%.

A penalty of \$500.00 will be assessed for each day the equipment (other than kiosks) or system issues are not repaired within five business days unless an alternative resolution is approved by the Contract Compliance Inspector. An additional penalty of \$1,000.00 will be assessed for any equipment that is not functioning for more than 10 business days.

A penalty of \$100.00 will be assessed for each month that the correspondence report reflects prisoners do not receive return correspondence within the time frame defined in the contract. An additional \$500.00 will be assessed for each month correspondence responses are late after the first penalty has been assessed.

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At the discretion of the State, these charges may be credited toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the State shall be completed within 10 days upon demand.

**SLA: SALES COMMISSION****Definition and Purpose**

The Contractor must ensure the sales commission (amount stated in the Contract) provided to MDOC is issued to the MDOC within 20 calendar days of the previous month.

Indicators/Methodology/Acceptable Standard**Indicator**

1. Annual and Monthly Sales Report

Methodology

1. Monthly review of the sales report to determine if the appropriate commission percentage has been remitted to MDOC within 20 calendar days of the previous month.

Acceptable Standard

The Contractor must ensure that commissions are remitted to the MDOC within 20 calendar days of the previous month. The acceptable standard is 100% compliance.

Amount for Failing to Meet Indicator:

A penalty of \$500.00 may be assessed for each day commissions are not received within 20 calendar days of the previous month. Continued late submissions may be considered a breach of contract.

At the discretion of the State, these charges may be credited toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the State shall be completed within 10 days upon demand.

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Attachment E – RESERVED



Attachment F – Technical Requirements

Column instructions

Column 1

This column indicates a numeric sequence of each function.

Column 2

This column describes the function(s) desired in the parts and maintenance program.

Column 3

This column indicates if a particular requirement is Mandatory, Expected or Optional.

Column 4

This column indicates whether Contractor can comply with a particular requirement. Contractor is to enter either “yes” or “no”.

Column 5

This column indicates how Contractor will comply with a particular requirement.

- A. Currently provided within the standard service.
- B. Currently provided as an enhancement to standard service at no additional cost.
- C. Currently provided as an enhancement to standard service at an additional cost detailed in the cost proposal.
- D. Not currently provided but will be added at the additional cost detailed in the cost proposal.
- E. Service will not be provided.

Column 6

This column shows Contractor’s comments

Req. No.	Requirement	Mandatory (M) Expected (E) Optional (O)	Req. Response (Yes / No)	Response (A, B, C, D, E)	Comments
1 Client / Workstation					
1.1	Applications accessed on SOM client workstations must function with the following web browser(s) in an INTRANET environment: • Microsoft IE 8.0	M	Yes	A	Contractor’s suite is best viewed with Internet Explorer version 8 or higher.



Req. No.	Requirement	Mandatory (M) Expected (E) Optional (O)	Req. Response (Yes / No)	Response (A, B, C, D, E)	Comments
1.2	Applications accessed on SOM client workstations must function with the following desktop Operating System (OS): • Windows XP SP3 • Windows 7 • Windows 8	M	Yes	A	Contractor's suite is fully functional on all 3 Operating Systems referenced, both 32x and 64x bit versions.
2. System Documentation					
2.1	Contractor must provide documentation with a logical network diagram that describes how the infrastructure components will meet the functional requirements.	M	Yes	A	
2.2	Documentation must provide conceptual and logical data-flow diagrams.	M	Yes	A	
2.3	Contractor must provide documentation with a high-level architecture diagram, including logical and physical components.	M	Yes	A	
2.4	Documentation must describe error logging capability.	E	Yes	A	By default, all activities including all transactions, communications, and errors are logged. These activities are logged both at the local level (i.e., locally on the individual kiosks), and at the database level.



Req. No.	Requirement	Mandatory (M) Expected (E) Optional (O)	Req. Response (Yes / No)	Response (A, B, C, D, E)	Comments
2.5	Contractor must provide documentation to describe Disaster Recovery capabilities (including Hot and Cold standby options, licensing implications, and critical vs. non-critical functionality and data).	M	Yes	A	
2.6	Contractor must provide documentation to describe any batch processing requirements for the application.	E	Yes	A	

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Req. No.	Requirement	Mandatory (M) Expected (E) Optional (O)	Req. Response (Yes / No)	Response (A, B, C, D, E)	Comments
2.7	Documentation must provide backup/recovery information.	E	Yes	A	<p>Production databases are mirrored to a secondary onsite server and log shipped to a third onsite server.</p> <p>All Web and essential Services servers are members of a server farm. This gives us the flexibility of doing real-time maintenance on any server without adversely affecting Contractor's production environment.</p> <p>All other essential production data is replicated real-time between our Enterprise SANs.</p> <p>In addition, weekly full and daily incremental backups are also retained on tapes.</p>

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Req. No.	Requirement	Mandatory (M) Expected (E) Optional (O)	Req. Response (Yes / No)	Response (A, B, C, D, E)	Comments
2.8	Documentation must describe required application maintenance activities and time frames.	E	Yes	A	<p>Application maintenance is scheduled 2x per month, starting at 0400hrs EST and ending at 0700hrs EST. During this maintenance window the following updates and upgrades are applied to Contractor's production environment:</p> <ul style="list-style-type: none"> • Bug Fixes • Feature Updates and Upgrades • Security Patching <p>Firmware, security updates and equipment refresh for firewalls, load balancers, routers and other fringe / edge devices along with any network modifications are assessed on an individual basis. The default window for these devices is 0200hrs – 0700hrs EST.</p>

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Req. No.	Requirement	Mandatory (M) Expected (E) Optional (O)	Req. Response (Yes / No)	Response (A, B, C, D, E)	Comments
2.9	Documentation must describe how the system will be taken off-line for maintenance, updates and upgrades.	E	Yes	A	<p>If maintenance is required outside of Contractor's scheduled application maintenance windows, our front-end load balancers to Contractor's server farms are leveraged.</p> <p>Targeted servers / services are removed from the spray where maintenance activity can be done without impact to production traffic or performance.</p>
2.10	Documentation must describe the level of effort (both SOM and Contractor) and anticipated downtime for product upgrade installation.	E	Yes	A	<p>Product upgrades are all done within our Application maintenance cycle mentioned in 2.8 above. The maximum maintenance window is 3 hours; 0400hrs to 0700hrs EST.</p> <p>There is no interaction with SOM or any other external vendors during this period.</p>

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Req. No.	Requirement	Mandatory (M) Expected (E) Optional (O)	Req. Response (Yes / No)	Response (A, B, C, D, E)	Comments
2.11	Documentation must provide the anticipated frequency and requirements of patches (releases, break-fix, 0-day), minor, and major releases.	M	Yes	A	Releases are scheduled 2x per month, these include both minor and major releases. Break-fix / zero-day issues are assessed / evaluated individually and actioned accordingly.
2.13	Documentation must provide information on certification /compatibility with OS patches, Service Pack, and upgrade paths.	E	Yes	A	It is the Contractor's policy to ensure that our Production environment leverages the latest OS patches and Service Packs available. It is also the Contractor's policy to have these essential updates tested in our QA environment before releasing them into production. Full regression testing is done in our QA environment.



Req. No.	Requirement	Mandatory (M) Expected (E) Optional (O)	Req. Response (Yes / No)	Response (A, B, C, D, E)	Comments
2.14	Application/System documentation will provide FAQ and/or Support Information for frequent issues staff/users may encounter.	E	Yes	A	The prisoner kiosk has a FAQ for frequent issues users may encounter. Also, the Contractor has a dedicated Help Desk (email and phone support) to help staff members with any issues they may encounter.
3. Installation					
3.1	Contractor must provide a detailed work plan (in hours) and duration (in days) of a typical installation of the base package, including all modules. Include both SOM and vendor effort.	E	Yes	A	
3.2	Contractor must provide a high-level project plan outlining activity descriptions, work effort, duration and resources for a typical base-package installation.	E	Yes	A	
3.3	Provide a list of functional issues encountered by other users during a typical implementation of your software.	E	Yes	A	Contractor's software resides on its kiosks with data transmissions and operating procedures that occur on a separate network from MDOC's network. It does not impact other users.



Req. No.	Requirement	Mandatory (M) Expected (E) Optional (O)	Req. Response (Yes / No)	Response (A, B, C, D, E)	Comments
3.4	Provide a list of technical issues encountered by other users during a typical implementation of your software.	E	Yes	A	Contractor's technical focus always resides outside of a DOC's existing network. Other users are not affected by the technical implementation of Contractor's software.
3.5	Provide a detailed list of any browser plug-ins (e.g., ActiveX, Java, Flash) required by the application.	M	Yes	A	<ul style="list-style-type: none"> • Adobe Flash • IE11 • .NET4



4. Reporting					
4.1	The reporting product technology will not require any installed component on the user desktop.	E	Yes	A	Contractor's suite is entirely web based. Reports can be viewed on screen as well as printed.
5. Application Security					
5.0	Contractor must work with SOM to complete a DTMB Project Security Plan and Assessment (DIT-0170) for the solution.	M	Yes	A	Contractor is available and ready to work with SOM to complete the DTMB Project Security Plan and Assessment (DTMB-0170).
5.1	The solution must have built-in security controls and meet or exceed current SOM security requirements as described in the State Administrative Guide: http://www.michigan.gov/documents/dmb/1340_193162_7.pdf	M	Yes	A	Contractor system is protected against all forms of unauthorized access, use, disclosure, modification, destruction and denial as described in the State Administrative Guide.
5.2	Application access must be loggable and have a viewable audit trail(s).	M	Yes	A	Application access can be logged and audit trails are viewable in the facility website.
5.3	Changes to user permissions must be loggable and have a viewable audit trail(s).	M	Yes	A	Changes to user permissions are logged and the audit trails are viewable in the facility website.
5.4	Access to audit trail logs must be able to be restricted to approved administrators.	M	Yes	A	Access to Contractor's data, including audit trail logs and the physical environment, is restricted to approved users.



5.5	Application access and changes to application access must log the following information: <ul style="list-style-type: none"> • Date/time • Nature of operation • Name of changed item • Name of who made the change • Before and after value of the changed item 	E	Yes	A	Logs contain all requested information.
5.6	The following application change event(s) must be logged: <ul style="list-style-type: none"> • Changes to individual permission level • Changes to role membership • Changes to role permissions • Changes to access to application functions 	E	Yes	A	All requested application change events are logged.
5.7	Session State will be stored and maintained in an encrypted manner.	E	Yes	A	Session State is encrypted using TLS v1.0 and higher
5.8	A Contractor solution or third-party contractor solution will comply with any of the following application and data processing standards: <ul style="list-style-type: none"> • Sarsbane-Oxsley • PCI-DSS • HIPPA 	E	Yes	A	Contractor works with a Qualified Security Assessor (QSA) to validate PCI-DSS compliance.
5.9	Contractor application must support encryption of data both at rest and in motion, in accordance with the data classification.	M	Yes	A	Sensitive data is encrypted both at rest and in motion.
5.10	The application/ database will provide data archival functionality.	E	Yes	A	All Contractor data is archived and can be retrieved upon MDOC request.



5.11	The application database will support assured record destruction by secure and permanent record deletion. (KB-#7)	E	Yes	A	All record destruction is secure and permanent.
5.12	A security assessment of the purchased application, and its components, will be provided that has been verified by an independent third party.	E	Yes	A	Security assessments are conducted quarterly and verified by QSA 403Labs/SIKICH.
5.13	End-user software applications, or components thereof, accessed on SoM client workstations, must not require privileged, super-user or administrator mode in order to function properly.	M	Yes	A	End-user application does not require privileged access on the workstation.

6 Identity Management

6.1	The application will support the following authentication requirement: <ul style="list-style-type: none"> • User ID and Passwords • Unique business process 	E	Yes	A	The application supports user ID and password authentication.
6.2	Application authentication and authorization must be by individual user. User account information must be stored securely in a database. Users may belong to groups and roles.	M	Yes	A	Application authentication and authorization is by individual user. User account information is stored securely in the Contractor's database. Users can belong to groups/roles.



6.3	<p>Passwords and User ID's must be able to:</p> <ul style="list-style-type: none"> • Protect sensitive data • Restrict access to only those intended • Meet MDOC Security Standards • Be encrypt-able 	E	Yes	A	<p>Passwords and User IDs protect sensitive data and restrict access only to the intended users.</p> <p>Passwords are encrypted and password policy meets MDOC security standards.</p>
6.4	The application must lock out users after three invalid login attempts due to bad passwords.	E	Yes	A	Users are locked out after 3 invalid login attempts.
6.5	The application must provide the system administrators with the capabilities to define different roles with different privileges.	E	Yes	A	Application allows administrators to define roles with different privileges.
6.6	The application will provide the system administrators with the capabilities to create groups whose members can be either role-based or individual login account names.	E	Yes	A	The application provides administrators with the ability to create groups based on roles, and those roles contain individual login accounts. Permissions can also be assigned directly to the user.

**7. Infrastructure Security**

7.1	Client applications must adhere to SOM Policy 1340.00 regarding "Information Security": http://www.michigan.gov/documents/dmb/1340_193162_7.pdf	M	Yes	A	Contractor's system protects confidentiality, integrity, and availability of information as described in the SOM Policy.
7.2	Web interface or browser technology will use TCP/IP protocol through Ports 80 or 443.	E	Yes	A	For security purposes, the web interface is accessible on port 443 only.
7.3	Network communication will use the following port(s) and protocol(s): <ul style="list-style-type: none"> • 443 using ADO.NET • 443 using TCP • Internet Assigned Number Authority (IANA) registered ports • Database protocol (IE: SQL Server, Oracle) • SOAP 	E	Yes	A	Network communication is on port 443 only. Web services used by the kiosk communicate using SOAP.
7.4	Contractor network solutions must be approved by DTMB prior to installation.	M	Yes	A	

8. Solution Architecture

8.1	The application's minimum technology requirements, including Operating System (OS) versions, vendor versions, and release level of each product, will be provided.	E	Yes	A	The application requires Windows XP Service pack 3 (at a minimum).
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8.2	<p>A Service Level Agreement (SLA) must be in effect for the solution/system specifying, at a minimum, the following:</p> <ul style="list-style-type: none"> • Criticality Level (Critical, High, Medium) • Recovery Point Objective (time in hours) • Recovery Time Objective (time in hours) 	M	Yes	A	SLAs will be in effect for Contractor's system.
8.3	<p>Provide a technology roadmap for the proposed system showing a five (5) year plan for new software version releases, support window, and sun setting.</p>	E	Yes	A	<p>Contractor's application offering is updated twice a month.</p> <p>Release dates for the year are published at annually.</p>
9. Solution Integration					
9.1	<p>System integration will support the following method(s):</p> <ul style="list-style-type: none"> • Web Services • SOAP • ODBC 	O	Yes	A	SOAP-based web services are supported.
9.2	<p>Provide a method to import data from the following proprietary sources:</p> <ul style="list-style-type: none"> • MDOC Offender Management Systems 	M	Yes	A	<p>Data from Offender Management Systems can be imported by SFTP using an automated process.</p> <p>This integration is currently in place between Contractor and MDOC.</p>



9.3	The solution must be able to export data to the following external source(s): <ul style="list-style-type: none"> • Microsoft Office 2003 • Microsoft Office 2010 And any future versions of Microsoft Office.	E	Yes	A	Contractor's system can provide an automatic daily file that is compatible with Microsoft Office.
9.4	The ability to export data in the following output formats must be available: <ul style="list-style-type: none"> • XML • Text file 	M	Yes	A	Data can be exported as text or XML.
9.5	The ability to make use of the following external services must be available: <ul style="list-style-type: none"> • State of Michigan Data Exchange Gateway (DEG) 	M	Yes	A	Contractor is able to make use of this external service.

10. System Administration and Licensing

10.1	Software licensing will be inclusive for all packages included in the solution, unless explicitly listed and detailed.	E	Yes	A	All of Contractor's software is proprietary and developed in-house, so no licensing is required.
10.2	Application/System documentation will provide access to FAQ and/or Support Information for frequent issues administrative staff may encounter.	E	Yes	A	Staff can access the FAQ or request support from Contractor's Help Desk.
10.3	Documentation will include layout of data stored within each system and must include (but not limited to) field name, field description, data type and field length.	M	Yes	A	See 2.6 for field descriptions.

**11. Application Development Management – (PCI-DSS)**

11.1	Software applications must be developed in accordance with PCI DSS (for example, secure authentication and logging) and based on industry best practices. Information security must be incorporated throughout the Systems Development Life Cycle (SDLC).	M	Yes	A	Software is developed in accordance with PCI-DSS and industry best practices. Information security is incorporated throughout the SDLC.
11.2	All security patches and system and software configuration changes must be tested before deployment, including but not limited to: • All input must be validated to prevent such things as cross-site scripting, injection flaws and malicious file execution. • Proper error handling must be incorporated into the software. • Data at rest must use secure cryptographic storage. • Data in motion must use secure communications. • Role-based access control (RBAC) must be used to control and audit user actions.	M	Yes	A	All security patches and system and software configuration changes are tested before deployment as per these specifications.
11.3	Production data (live Primary Account Numbers - PANs) are not used for testing or development purposes.	M	Yes	A	Live PANs are not used for testing or development purposes. To enhance security, Contractor has used tokenization since 2013.

**12. Information Technology Network and Infrastructure**

12.1	The information technology network and infrastructure must conform with SOM Policy 1345.00 regarding "Network and Infrastructure": http://www.michigan.gov/documents/dmb/1345.00_282982_7.pdf	M	Yes	A	Contractor's information technology network and infrastructure are designed to protect data while building a defensible technical architecture, as per SOM policy.
12.2	The solution must contain values for projected capacity and special needs requirements covering all aspects of data transport & security across the information technology network and infrastructure.	M	Yes	A	Contractor's solution must contain values for projected capacity and special needs requirements covering all aspects of data transport & security across the information technology network and infrastructure.
12.3	The solution must conform with the SOM DTMB State-wide management process self-installed Managed Local Area Network (LAN) cabling, "1345.00.01 Self-installed Managed LAN Cabling Standard": http://www.michigan.gov/dmb/0,4568,7-150-56355_56579_56755---.00.html	M	Yes	A	All current and future installations shall comply with this standard.



Attachment G – PREA Standards – Final
Adult Prisons and Jails

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§ 115.5 General definitions.

For purposes of this part, the term—

Agency means the unit of a State, local, corporate, or nonprofit authority, or of the Department of Justice, with direct responsibility for the operation of any facility that confines inmates, detainees, or residents, including the implementation of policy as set by the governing, corporate, or nonprofit authority.

Agency head means the principal official of an agency.

Community confinement facility means a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers), other than a juvenile facility, in which individuals reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours.

Contractor means a person who provides services on a recurring basis pursuant to a contractual agreement with the agency.

Detainee means any person detained in a lockup, regardless of adjudication status.

Direct staff supervision means that security staff are in the same room with, and within reasonable hearing distance of, the resident or inmate.

Employee means a person who works directly for the agency or facility.

Exigent circumstances means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.

Facility means a place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) that is used by an agency for the confinement of individuals.

Facility head means the principal official of a facility.

Full compliance means compliance with all material requirements of each standard except for *de minimis* violations, or discrete and temporary violations during otherwise sustained periods of compliance.

Gender nonconforming means a person whose appearance or manner does not conform to traditional societal gender expectations.

Inmate means any person incarcerated or detained in a prison or jail.

Intersex means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

Jail means a confinement facility of a Federal, State, or local law enforcement agency whose primary use is to hold persons pending adjudication of criminal charges, persons committed to confinement after adjudication of criminal charges for sentences of one year or less, or persons adjudicated guilty who are awaiting transfer to a correctional facility.



Juvenile means any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail.

Juvenile facility means a facility primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system.

Law enforcement staff means employees responsible for the supervision and control of detainees in lockups.

Lockup means a facility that contains holding cells, cell blocks, or other secure enclosures that are:

- (1) Under the control of a law enforcement, court, or custodial officer; and
- (2) Primarily used for the temporary confinement of individuals who have recently been arrested, detained, or are being transferred to or from a court, jail, prison, or other agency.

Medical practitioner means a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified medical practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

Mental health practitioner means a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified mental health practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

Pat-down search means a running of the hands over the clothed body of an inmate, detainee, or resident by an employee to determine whether the individual possesses contraband.

Prison means an institution under Federal or State jurisdiction whose primary use is for the confinement of individuals convicted of a serious crime, usually in excess of one year in length, or a felony.

Resident means any person confined or detained in a juvenile facility or in a community confinement facility.

Secure juvenile facility means a juvenile facility in which the movements and activities of individual residents may be restricted or subject to control through the use of physical barriers or intensive staff supervision. A facility that allows residents access to the community to achieve treatment or correctional objectives, such as through educational or employment programs, typically will not be considered to be a secure juvenile facility.

Security staff means employees primarily responsible for the supervision and control of inmates, detainees, or residents in housing units, recreational areas, dining areas, and other program areas of the facility.

Staff means employees.

Strip search means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person’s breasts, buttocks, or genitalia.

Transgender means a person whose gender identity (*i.e.*, internal sense of feeling male or female) is different from the person’s assigned sex at birth.

Substantiated allegation means an allegation that was investigated and determined to have occurred.

Unfounded allegation means an allegation that was investigated and determined not to have occurred.

Unsubstantiated allegation means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.



Volunteer means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.

Youthful inmate means any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.

Youthful detainee means any person under the age of 18 who is under adult court supervision and detained in a lockup.

§ 115.6 Definitions related to sexual abuse.

For purposes of this part, the term—

Sexual abuse includes—

- (1) Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and
- (2) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;
- (7) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and
- (8) Voyeurism by a staff member, contractor, or volunteer.

Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

Sexual harassment includes—



- (1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and
- (2) Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.



Prevention Planning

§ 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

- (a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.
- (b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.
- (c) Where an agency operates more than one facility, each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards.

Prevention Planning

§ 115.12 Contracting with other entities for the confinement of inmates.

- (a) A public agency that contracts for the confinement of its inmates with private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards.
- (b) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.

Prevention Planning

§ 115.13 Supervision and monitoring.

- (a) The agency shall ensure that each facility it operates shall develop, document, and make its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:
- (1) Generally accepted detention and correctional practices;
 - (2) Any judicial findings of inadequacy;
 - (3) Any findings of inadequacy from Federal investigative agencies;
 - (4) Any findings of inadequacy from internal or external oversight bodies;
 - (5) All components of the facility's physical plant (including "blind-spots" or areas where staff or inmates may be isolated);
 - (6) The composition of the inmate population;
 - (7) The number and placement of supervisory staff;
 - (8) Institution programs occurring on a particular shift;
 - (9) Any applicable State or local laws, regulations, or standards;
 - (10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
 - (11) Any other relevant factors.
- (b) In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan.
- (c) Whenever necessary, but no less frequently than once each year, for each facility the agency operates, in consultation with the PREA coordinator required by § 115.11, the agency shall assess, determine, and document whether adjustments are needed to:
- (1) The staffing plan established pursuant to paragraph (a) of this section;
 - (2) The facility's deployment of video monitoring systems and other monitoring technologies; and
 - (3) The resources the facility has available to commit to ensure adherence to the staffing plan.
- (d) Each agency operating a facility shall implement a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. Each agency shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.



Prevention Planning

§ 115.14 Youthful inmates.

(a) A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.

(b) In areas outside of housing units, agencies shall either:

(1) maintain sight and sound separation between youthful inmates and adult inmates, or

(2) provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.

(c) Agencies shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.

Prevention Planning

§ 115.15 Limits to cross-gender viewing and searches.

(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.

(b) As of [INSERT DATE 3 YEARS PLUS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], or [INSERT DATE 5 YEARS PLUS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.

(c) The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates.

(d) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.

(e) The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

Prevention Planning

§ 115.16 Inmates with disabilities and inmates who are limited English proficient.

(a) The agency shall take appropriate steps to ensure that inmates with disabilities (including, for example, inmates who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps shall include, when necessary to ensure effective communication with inmates who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In addition, the agency shall ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities, including inmates who have intellectual disabilities, limited reading skills, or who are blind or have low vision. An agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative

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burdens, as those terms are used in regulations promulgated under title II of the Americans With Disabilities Act, 28 CFR 35.164.

(b) The agency shall take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to inmates who are limited English proficient, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(c) The agency shall not rely on inmate interpreters, inmate readers, or other types of inmate assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties under § 115.64, or the investigation of the inmate's allegations.

Prevention Planning
§ 115.17 Hiring and promotion decisions.

(a) The agency shall not hire or promote anyone who may have contact with inmates, and shall not enlist the services of any contractor who may have contact with inmates, who—

(1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);

(2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or

(3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.

(b) The agency shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.

(c) Before hiring new employees who may have contact with inmates, the agency shall:

(1) Perform a criminal background records check; and

(2) Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

(d) The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates.

(e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees.

(f) The agency shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.

(g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.

(h) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

Prevention Planning
§ 115.18 Upgrades to facilities and technologies.

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect inmates from sexual abuse.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect inmates from sexual abuse.

Responsive Planning
§ 115.21 Evidence protocol and forensic medical examinations.



(a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
(b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011.
(c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.
(d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.
(e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.
(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.
(g) The requirements of paragraphs (a) through (f) of this section shall also apply to: (1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in prisons or jails; and (2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails.
(h) For the purposes of this section, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.
<i>Responsive Planning</i> <i>§ 115.22 Policies to ensure referrals of allegations for investigations.</i>
(a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.
(b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy on its website or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.
(c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity.
(d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.
(e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.
<i>Training and Education</i>



§ 115.31 Employee training.

- (a) The agency shall train all employees who may have contact with inmates on:
- (1) Its zero-tolerance policy for sexual abuse and sexual harassment;
 - (2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
 - (3) Inmates' right to be free from sexual abuse and sexual harassment;
 - (4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
 - (5) The dynamics of sexual abuse and sexual harassment in confinement;
 - (6) The common reactions of sexual abuse and sexual harassment victims;
 - (7) How to detect and respond to signs of threatened and actual sexual abuse;
 - (8) How to avoid inappropriate relationships with inmates;
 - (9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and
 - (10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.
- (b) Such training shall be tailored to the gender of the inmates at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.
- (c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.
- (d) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received.

Training and Education
§ 115.32 Volunteer and contractor training.

- (a) The agency shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.
- (b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.
- (c) The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.

Training and Education
§ 115.33 Inmate education.

- (a) During the intake process, inmates shall receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.
- (b) Within 30 days of intake, the agency shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.
- (c) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility.
- (d) The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.
- (e) The agency shall maintain documentation of inmate participation in these education sessions.



(f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

Training and Education

§ 115.34 Specialized training: Investigations.

(a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

(d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.

Training and Education

§ 115.35 Specialized training: Medical and mental health care.

(a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in:

- (1) How to detect and assess signs of sexual abuse and sexual harassment;
- (2) How to preserve physical evidence of sexual abuse;
- (3) How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
- (4) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

(b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.

(d) Medical and mental health care practitioners shall also receive the training mandated for employees under § 115.31 or for contractors and volunteers under § 115.32, depending upon the practitioner's status at the agency.

Screening for Risk of Sexual Victimization and Abusiveness

§ 115.41 Screening for risk of victimization and abusiveness.

(a) All inmates shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.

(b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.

(c) Such assessments shall be conducted using an objective screening instrument.

(d) The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization:

- (1) Whether the inmate has a mental, physical, or developmental disability;
- (2) The age of the inmate;
- (3) The physical build of the inmate;
- (4) Whether the inmate has previously been incarcerated;
- (5) Whether the inmate's criminal history is exclusively nonviolent;
- (6) Whether the inmate has prior convictions for sex offenses against an adult or child;
- (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
- (8) Whether the inmate has previously experienced sexual victimization;
- (9) The inmate's own perception of vulnerability; and
- (10) Whether the inmate is detained solely for civil immigration purposes.

(e) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing inmates for risk of being sexually abusive.

(f) Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, the facility will



reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.

(g) An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.

(h) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section.

(i) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.

Screening for Risk of Sexual Victimization and Abusiveness

§ 115.42 Use of screening information.

(a) The agency shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.

(b) The agency shall make individualized determinations about how to ensure the safety of each inmate.

(c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.

(d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

(e) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.

(f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

(g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.

Screening for Risk of Sexual Victimization and Abusiveness

§ 115.43 Protective custody.

(a) Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.

(b) Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document:

- (1) The opportunities that have been limited;
- (2) The duration of the limitation; and
- (3) The reasons for such limitations.

(c) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.

(d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document:

- (1) The basis for the facility's concern for the inmate's safety; and
- (2) The reason why no alternative means of separation can be arranged.

(e) Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.



Reporting

§ 115.51 Inmate reporting.

(a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

(b) The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.

Reporting

§ 115.52 Exhaustion of administrative remedies.

(a) An agency shall be exempt from this standard if it does not have administrative procedures to address inmate grievances regarding sexual abuse.

(b)(1) The agency shall not impose a time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse.

(2) The agency may apply otherwise-applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse.

(3) The agency shall not require an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.

(4) Nothing in this section shall restrict the agency's ability to defend against an inmate lawsuit on the ground that the applicable statute of limitations has expired.

(c) The agency shall ensure that—

(1) An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and

(2) Such grievance is not referred to a staff member who is the subject of the complaint.

(d)(1) The agency shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.

(2) Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.

(3) The agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.

(4) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.

(e)(1) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.

(2) If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

(3) If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision.

(f)(1) The agency shall establish procedures for the filing of an emergency grievance alleging that an



inmate is subject to a substantial risk of imminent sexual abuse.

(2) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response within 48 hours, and shall issue a final agency decision within 5 calendar days. The initial response and final agency decision shall document the agency's determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

(g) The agency may discipline an inmate for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith.

Reporting

§ 115.53 Inmate access to outside confidential support services.

(a) The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.

(b) The facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

(c) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

Reporting

§ 115.54 Third-party reporting.

The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate.

Official Response Following an Inmate Report

§ 115.61 Staff and agency reporting duties.

(a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

(b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.

(c) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph (a) of this section and to inform inmates of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services.

(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

(e) The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.

Official Response Following an Inmate Report

§ 115.62 Agency protection duties.

When an agency learns that an inmate is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the inmate.



Official Response Following an Inmate Report
§ 115.63 Reporting to other confinement facilities.

(a) Upon receiving an allegation that an inmate was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.

(b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.

(c) The agency shall document that it has provided such notification.

(d) The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

Official Response Following an Inmate Report
§ 115.64 Staff first responder duties.

(a) Upon learning of an allegation that an inmate was sexually abused, the first security staff member to respond to the report shall be required to:

(1) Separate the alleged victim and abuser;

(2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;

(3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and

(4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

Official Response Following an Inmate Report
§ 115.65 Coordinated response.

The facility shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

Official Response Following an Inmate Report
§ 115.66 Preservation of ability to protect inmates from contact with abusers.

(a) Neither the agency nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

(b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern:

(1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§ 115.72 and 115.76; or

(2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

Official Response Following an Inmate Report
§ 115.67 Agency protection against retaliation.

(a) The agency shall establish a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff, and shall designate which staff members or departments are charged with monitoring retaliation.

(b) The agency shall employ multiple protection measures, such as housing changes or transfers for



inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

(c) For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

(d) In the case of inmates, such monitoring shall also include periodic status checks.

(e) If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.

(f) An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.

*Official Response Following an Inmate Report
§ 115.68 Post-allegation protective custody.*

Any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.

*Investigations
§ 115.71 Criminal and administrative agency investigations.*

(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.34.

(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

(f) Administrative investigations:

(1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and

(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

(j) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.

(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.



(l) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

Investigations

§ 115.72 Evidentiary standard for administrative investigations.

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

Investigations

§ 115.73 Reporting to inmates.

(a) Following an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility, the agency shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.

(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.

(c) Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, the agency shall subsequently inform the inmate (unless the agency has determined that the allegation is unfounded) whenever:

- (1) The staff member is no longer posted within the inmate's unit;
- (2) The staff member is no longer employed at the facility;
- (3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
- (4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

(d) Following an inmate's allegation that he or she has been sexually abused by another inmate, the agency shall subsequently inform the alleged victim whenever:

- (1) The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
- (2) The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

(e) All such notifications or attempted notifications shall be documented.

(f) An agency's obligation to report under this standard shall terminate if the inmate is released from the agency's custody.

Discipline

§ 115.76 Disciplinary sanctions for staff.

(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.

(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

Discipline

§ 115.77 Corrective action for contractors and volunteers.

(a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.

(b) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.



Discipline

§ 115.78 Disciplinary sanctions for inmates.

- (a) Inmates shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse.
- (b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories.
- (c) The disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.
- (d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending inmate to participate in such interventions as a condition of access to programming or other benefits.
- (e) The agency may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
- (f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.
- (g) An agency may, in its discretion, prohibit all sexual activity between inmates and may discipline inmates for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

Medical and Mental Care

§ 115.81 Medical and mental health screenings; history of sexual abuse.

- (a) If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.
- (b) If the screening pursuant to § 115.41 indicates that a prison inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.
- (c) If the screening pursuant to § 115.41 indicates that a jail inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.
- (d) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.
- (e) Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.

Medical and Mental Care

§ 115.82 Access to emergency medical and mental health services.

- (a) Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.
- (b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.62 and shall immediately notify the appropriate medical and mental health practitioners.
- (c) Inmate victims of sexual abuse while incarcerated shall be offered timely information about and timely



access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.

(d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

Medical and Mental Care

§ 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers.

(a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.

(b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

(c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.

(d) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

(e) If pregnancy results from the conduct described in paragraph (d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.

(f) Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.

(g) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

(h) All prisons shall attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

Data Collection and Review

§ 115.86 Sexual abuse incident reviews.

(a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.

(b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.

(c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.

(d) The review team shall:

(1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;

(2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;

(3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;

(4) Assess the adequacy of staffing levels in that area during different shifts;

(5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

(6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.

(e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

Data Collection and Review

§ 115.87 Data collection.

(a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under



its direct control using a standardized instrument and set of definitions.

(b) The agency shall aggregate the incident-based sexual abuse data at least annually.

(c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.

(d) The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.

(e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.

(f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

Data Collection and Review
§ 115.88 Data review for corrective action.

(a) The agency shall review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:

- (1) Identifying problem areas;
- (2) Taking corrective action on an ongoing basis; and
- (3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.

(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.

(c) The agency's report shall be approved by the agency head and made readily available to the public through its website or, if it does not have one, through other means.

(d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

Data Collection and Review
§ 115.89 Data storage, publication, and destruction.

(a) The agency shall ensure that data collected pursuant to § 115.87 are securely retained.

(b) The agency shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website or, if it does not have one, through other means.

(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.

(d) The agency shall maintain sexual abuse data collected pursuant to § 115.87 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

Audits
§ 115.93 Audits of standards.

The agency shall conduct audits pursuant to §§ 115.401–.405.

Auditing and Corrective Action
§ 115.401 Frequency and scope of audits.

(a) During the three-year period starting on [INSERT DATE ONE YEAR PLUS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and during each three-year period thereafter, the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once.

(b) During each one-year period starting on [INSERT DATE ONE YEAR PLUS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the agency shall ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, is audited.

(c) The Department of Justice may send a recommendation to an agency for an expedited audit if the Department has reason to believe that a particular facility may be experiencing problems relating to



sexual abuse. The recommendation may also include referrals to resources that may assist the agency with PREA-related issues.

(d) The Department of Justice shall develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit.

(e) The agency shall bear the burden of demonstrating compliance with the standards.

(f) The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type.

(g) The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.

(h) The auditor shall have access to, and shall observe, all areas of the audited facilities.

(i) The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information).

(j) The auditor shall retain and preserve all documentation (including, e.g., video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request.

(k) The auditor shall interview a representative sample of inmates, residents, and detainees, and of staff, supervisors, and administrators.

(l) The auditor shall review a sampling of any available videotapes and other electronically available data (e.g., Watchtour) that may be relevant to the provisions being audited.

(m) The auditor shall be permitted to conduct private interviews with inmates, residents, and detainees.

(n) Inmates, residents, and detainees shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.

(o) Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.



Auditing and Corrective Action
§ 115.402 Auditor qualifications.

(a) An audit shall be conducted by:

- (1) A member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government);
- (2) A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or
- (3) Other outside individuals with relevant experience.

(b) All auditors shall be certified by the Department of Justice. The Department of Justice shall develop and issue procedures regarding the certification process, which shall include training requirements.

(c) No audit may be conducted by an auditor who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within the three years prior to the agency's retention of the auditor.

(d) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits.

Auditing and Corrective Action
§ 115.403 Audit contents and findings.

(a) Each audit shall include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the agency under review.

(b) Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards.

(c) For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.

(d) Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility, and shall include recommendations for any required corrective action.

(e) Auditors shall redact any personally identifiable inmate or staff information from their reports, but shall provide such information to the agency upon request, and may provide such information to the Department of Justice.

(f) The agency shall ensure that the auditor's final report is published on the agency's website if it has one, or is otherwise made readily available to the public.

Auditing and Corrective Action
§ 115.404 Audit corrective action plan.

(a) A finding of "Does Not Meet Standard" with one or more standards shall trigger a 180-day corrective action period.

(b) The auditor and the agency shall jointly develop a corrective action plan to achieve compliance.

(c) The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a facility.

(d) After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.

(e) If the agency does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

Auditing and Corrective Action
§ 115.405 Audit appeals.

(a) An agency may lodge an appeal with the Department of Justice regarding any specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor's final determination.

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(b) If the Department determines that the agency has stated good cause for a re-evaluation, the agency may commission a re-audit by an auditor mutually agreed upon by the Department and the agency. The agency shall bear the costs of this re-audit.

(c) The findings of the re-audit shall be considered final.

State Compliance

§ 115.501 State determination and certification of full compliance.

(a) In determining pursuant to 42 U.S.C. 15607(c)(2) whether the State is in full compliance with the PREA standards, the Governor shall consider the results of the most recent agency audits.

(b) The Governor's certification shall apply to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch.

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Attachment H – RESERVED



Attachment I – Vendor Handbook

When a Vendor's employees are working under a Contract between the Vendor and the State of Michigan/Michigan Department of Corrections (MDOC), due to safety and security concerns, the following rules apply to all of the Vendor's employees (Employees) working within a MDOC prison/facility. Any violation of the Vendor Employee Handbook may result in a Stop Order being issued against the Employee, the Employee's removal from his/her assignment under the Contract and may result in additional sanctions from the Vendor and/or law enforcement.

Definitions

Contraband: Any article not specifically authorized for admittance into a correctional facility or on facility grounds, e.g. this list includes but is not limited to weapons, any firearm, alcohol, cell phones, cell/electronic watches, iphones, ipads, computers, laptops, tobacco, cigarettes and e-cigarettes, matches, lighters, Tasers®, mace, pepper spray, Google glasses, recording devices, ammunition, handcuff keys, walkie-talkies, yeast, fireworks, etc. (See **Attachment A to this Attachment I** for permissible items allowed into a facility without a gate manifest.)

Cell phones, iphones, ipads, computes, laptops, tobacco and tobacco products may be stored in the employee's secured vehicle only while on facility grounds.

Employee Permitted Items. Employees are permitted to take the following items into the facility on their person: a photo ID, up to and no more than \$25.00 currency. See also **Attachment A to this attachment I**.

Discriminatory Harassment: Unwelcome advances, requests for favors, and other verbal or non-verbal communication or conduct, for example comments, innuendo, threats, jokes, pictures, gestures, etc., based on race, color, national origin, disability, sex, sexual orientation, age, height, weight, marital status, religion, genetic information or partisan considerations.

Employee: A person employed by the Vendor.

Facility: Any property owned, leased, or occupied by the Michigan Department of Corrections, e.g office, prison, health care area, etc.

Offender: A prisoner or parolee under the jurisdiction of the MDOC or housed in a MDOC facility.

Overfamiliarity: Conduct which has resulted in or is likely to result in intimacy; a close personal or non-work related association. Overfamiliarity is strictly prohibited. Examples are being at the residence of an offender, being at the residence of an offender's family, giving or receiving non-work related letters, messages, money, personal mementos, pictures, telephone numbers, to or from an offender or a family member of a listed visitor of an offender, exchanging hugs with an offender, dating or having sexual relations with an offender, etc.

Over-the-Counter Medication: Medication which can be purchased without a prescription in the United States.

Prescription Medication: Medication which cannot be purchased without authorization from a properly licensed health care authority.

Sexual Harassment of Offenders: Sexual harassment includes verbal statements or comments of a sexual nature to an offender, demeaning references to gender or derogatory comments about body or clothing, or profane or obscene language or gestures of a sexual nature. Sexual harassment is strictly prohibited.



Sexual Conduct with Offenders: The intentional touching, either directly or through clothing, of a prisoner's genitals, anus, groin, breast, inner thigh, or buttock with the intent to abuse, arouse or gratify the sexual desire of any person. Permitting an offender to touch you either directly or through clothing with the intent to abuse, arouse or gratify the sexual desire of any person. Invasion of privacy for sexual gratification, indecent exposure, or voyeurism. An attempted, threatened, or requested sexual act or helping, advising, or encouraging another person to engage in a sexual act with an offender. Sexual conduct with offenders is strictly prohibited.

General Requirements

Discrimination. Employee shall not discriminate against a person on the basis of race, religion, sex, sexual orientation, race, color, national origin, age, weight, height, disability, marital status, genetic information or partisan considerations.

Political Activities. Employees cannot proselytize for any political group or religion in a facility and on MDOC grounds as this may cause safety and security issues within the facility.

Conflict of Interest. If any Employee has a family member or friend who is incarcerated, he/she must immediately notify their supervisor and the MDOC for proper facility assignment.

Public Information. Employees are not authorized to make public statements on behalf of the MDOC.

Role Model. Employees serve as role models to offenders. Therefore, Employees are to act in a professional manner at all times. Any arrest, citation, issuance of a warrant for a felony or misdemeanor offense or issuance of a personal protection order against the Employee must be immediately reported to his/her supervisor. Any action or inaction by an Employee which jeopardizes the safety or security of the facility, MDOC employees, the public or offenders is prohibited.

Fitness for Duty. Employees are required to be physically and mentally fit to perform their job duties. If you do not believe you are mentally or physically fit, please report this issue to your immediate supervisor. Employees shall immediately notify their supervisor if they are taking medication which may interfere with their work responsibilities.

Use of Leave/Notice of Absence. Employees are required to obtain preapproval of leave from their immediate supervisor. In the event of an unauthorized Employee absence, the Vendor must provide back-up staff.

Punctuality. Employees are required to be punctual and adhere to the work schedule approved by their supervisor and to be at their assignment at the start of their shift. This means that Employees must plan for proper travel time, inclement weather, and to go through the facility check-in process in order to at their assigned location at the start of their shift.

Jail Time or Other Restricted Supervision. No Employee shall be allowed to work in a facility while under electronic monitoring of any type, house arrest, or sentenced to jail time for any reason, including weekends, even if granted a work release pass.

Specific Vendor Employee Rules

- 1. Humane Treatment of Individuals.** Employees are expected to treat all individuals in a humane manner while on duty in a facility. Examples of actions of an Employee in violation of this rule include but are not limited to, displaying a weapon, using speech, an action or gesture or movement that



causes physical or mental intimidation or humiliation, failing to secure necessary culinary tools, using abusive or profane language which degrades or belittles another person or group, etc.

2. **Use of Personal Position for Personal Gain.** Employees shall not engage in actions that could constitute the use of their position for personal gain. Example, employees are forbidden from exchanging with, giving to, or accepting gifts or services from an offender or an offender's family.
3. **Discriminatory Harassment.** Employees shall not engage in discriminatory harassment which includes but is not limited to, unwelcomed advances, requests for favors, other verbal or non-verbal communication or conduct based on race color, national origin, disability, sex, sexual orientation, age, height, weight, marital status, religion, genetic information, etc.
4. **Misuse of State or Vendor Property/Equipment.** Employees shall not misuse State or Vendor property. Examples: using property for a personal purpose beyond that of your job duties, removing items from the premises without authorization, etc.
5. **Conduct Unbecoming.** Employees shall not behave in an inappropriate manner or in a manner which may harm or adversely affect the reputation or mission of the MDOC. If an employee is arrested or charged with a criminal offense, this matter shall be reported to the Employee's supervisor. Any conduct by an Employee involving theft is not tolerated.
6. **Physical Contact.** Inappropriate physical contact with offenders and MDOC staff is prohibited. Examples include inappropriately placing of hands on another person, horseplay, etc.
7. **Confidential Records/Information.** Employees shall respect the confidentiality of other employees, MDOC staff and prisoners. Employees shall not share confidential information.
8. **Use of Health Care Services.** Employees shall only use the facility health care services in case of emergency, medical stabilization and for serious on-the-job injuries. When the clinic facilities are used for an emergency or on-the-job injury, the Employee is to be transferred as soon as practicable to a physician or hospital.
9. **Insubordination.** Based on the safety and security of the facility, there may be times where Employees are provided guidance from MDOC staff. Willful acts of Employees contrary to MDOC instructions that compromise the MDOC's ability to carry out its responsibilities, are prohibited.
10. **Reserved.**
11. **Searches.** Employees are subject to search while on facility property and prior to entry into a facility. Employees who refuse to submit to an authorized search will not be permitted into the facility.
12. **Emergency.** Employees must immediately respond during an emergency, e.g. call for assistance, respond to an emergent situation, etc. This may include participating in emergency preparedness drills conducted by the MDOC, e.g. fire drills.
13. **MDOC Rules, Regulations, Policies, Procedures, Post Orders, Work Statements.** Employees must be familiar with and act in accordance with MDOC rules, regulations, policies, etc. Employees are prohibited from interfering with and undermining the MDOC's efforts to enforce rules, regulations, etc.
14. **Maintaining Order.** Any action or inaction that may detract from maintaining order within the facility is prohibited, e.g. antagonizing offenders, inciting to riot, etc.



15. **Chain of Command.** Employees shall follow their chain of command. Complaints and concerns are to be submitted to the immediate supervisor unless the situation is an emergency.
16. **Criminal Acts.** Employees shall not engage in conduct that results in a felony or misdemeanor conviction. Employees must provide a verbal report to their immediate supervisor within 24 hours of a felony or misdemeanor citation or arrest, the issuance of any warrant, any arraignment, pre-trial conference, pleas of any kind, trial, conviction, sentencing, federal, diversion or dismissal.
17. **Contraband and Controlled Substances.** There is a zero tolerance policy regarding any Employee possessing, using or introducing controlled substances into a facility where offenders are housed. The possession and presence of contraband presents a safety and security risk and is prohibited. Possession, introduction, or attempting to introduce any substance including controlled substances or intoxicants into any facility is prohibited. Yeast is also prohibited which can be used to manufacture a prohibited or illegal substance.
18. **Use of Alcohol or Controlled Substance.** Employees are prohibited from consuming alcohol or any controlled substance while on duty or on breaks. Employees who report for duty with alcohol on his/her breath or when suspected of being under the influence of alcohol or a controlled substance, may be prohibited from entering into the facility or be immediately removed from their assignment.
19. **Reserved.**
20. **Introduction or Possession of Contraband.** Employees shall not introduce or possess unauthorized items such as escape paraphernalia, weapons, facsimiles of weapons, ammunition, wireless communication devices, cell phones, tobacco, electronic cigarettes, lighters, matches, firearm, alcohol, cell phones, cell/electronic watches, iphones, ipads, computers, laptops, Tasers®, mace, pepper spray, Google glasses, recording devices, handcuff keys, walkie-talkies, yeast, fireworks, etc.
21. **Motor Vehicles on the Premises of Prison Grounds.** All motor vehicles must be properly locked and secured. It is the employee's responsibility to ensure that unauthorized items or contraband are not in the motor vehicle. Motor vehicles on facility grounds may be searched at any time for any reason.
22. **Reserved.**
23. **Possession and/or Use of Medication.** Employees shall immediately notify their supervisor if taking prescribed medication which may interfere with the Employee's work responsibilities or the safety and security of the facility. Such medication includes but is not limited to: narcotic pain medication, psychotropic medication, mood altering medication and antihistamines. The Michigan Medical Marihuana Act (the Act), Initiated Law 1 of 2008, MCL 333.26421 – 333.26430, allows for the use of medical marihuana for individuals who have been diagnosed with a "debilitating medical condition." It is the position of the MDOC that Employees may not possess or use medical marihuana as it is both a federal and state offense.
24. **Reserved.**
25. **Reserved.**
26. **Entry into a Facility/Visiting Offenders.** Employees are not permitted in non-public areas of the facility for non-work related purposes, especially where offenders are housed.

Generally, Employees may visit an offender only if that offender is an immediate family member and is housed at another facility other than where the employee works, unless the Warden has granted



special approval. Employees, who have family members incarcerated in the MDOC, must let their supervisor know immediately who will subsequently report this information to the MDOC. An employee may visit an offender only if that offender is an immediate family member and is housed at a facility other than where the Employee is assigned to work. Immediate family member is defined as a parent, grandparent, step-parent, grandchild, sibling, spouse, mother-in-law, father-in-law, child, step-child, stepbrother/sister. Visiting an immediate family member who is an offender housed in a facility requires prior permission of both the Vendor and they MDOC.

27. **Dereliction of Duty.** Employees shall fully perform their job duties. Failure to do so is considered dereliction of duty and will be reported to the Vendor.
28. **Use of Force.** Employees shall use the least amount of force necessary to perform their duties. Excessive use of force will not be tolerated. Employees may act to reasonably defend themselves against violence.
29. **Exchange of Duties.** Employees shall not exchange duties or responsibilities with any MDOC staff.
30. **Duty Relief.** Employees shall not leave an assignment without prior relief or authorization from their immediate supervisor.
31. **Security Precautions.** Any action or inaction by an Employee which jeopardizes the safety or security of the facility, MDOC staff, the public or offenders is prohibited. Examples include but are not limited to, loss of equipment (knives, tools), propping open security doors or doors that should remain locked, allowing an unknown or unidentified individual into a building, unauthorized distribution of MDOC exempt policy directives/operating procedures, etc.
32. **Attention to Duty.** Employees shall remain alert while on duty. Sleeping or failure to properly observe an assigned area or offenders are examples of inattention to duty and are prohibited. Items that detract from the alertness of an Employee are prohibited. These items include but are not limited to computer games, books, reading pamphlets, newspapers, or other reading materials while on duty. (MDOC cookbooks, menus, non-exempt policies and procedures and postings, etc. are not considered prohibited items.)
33. **Reporting Violations.** Employees, who are approached by offenders to introduce contraband or violate the safety and security of the institution, shall concurrently report each time they are approached to the Employee's immediate supervisor and MDOC staff. Employees must report conduct involving drugs, escape, sexual misconduct, sexual harassment, workplace safety or excessive use of force. A complete written report of the approach must be made no later than the end of the Employee's work day.
34. **Reserved.**
35. **Reserved.**
36. **Reserved.**
37. **Reserved.**
38. **Reserved.**
39. **Reserved.**
40. **Reserved.**



41. **Reserved.**
42. **Employee Uniform Requirements.** Employees must wear their required uniforms as approved by the Vendor and the MDOC. Employees will not be permitted to enter the facilities without the proper Vendor approved uniform/work attire.
43. **Reserved.**
44. **Reserved.**
45. **Reserved.**
46. **Reserved.**
47. **Falsifying, Altering, Destroying, Removing Documents or Filing False Report.** Employees shall not falsify, alter, destroy or remove documents from the facility. Fraudulent reporting of an Employee's time is expressly prohibited.
48. **Giving or Receiving Gifts or Services.** Employees are prohibited from exchanging with, giving to, or accepting any gifts or services from offenders or an offender's family. This includes but is not limited to food and beverage items, shoe shines, clothing, paper products, stamps, delivering letters/correspondence, etc.
49. **Reserved.**
50. **Overfamiliarity or Unauthorized Contact.** Employees are prohibited from engaging in overfamiliarity with an offender, or an offender's family member or a listed visitor or friend of an offender. Relationships with an offender, other than an Employee with his or her approved family member, is prohibited regardless of when the relationship began. Any exceptions must have Vendor and MDOC prior approval.
51. **Sexual Conduct.** Employees are prohibited from engaging in sexual conduct with anyone while on duty.
52. **Sexual Harassment.** Employees are prohibited from sexual harassing anyone. Employees are prohibited from assisting, advising or encouraging any person to sexually harass another.
53. **Workplace Safety.** Threats made by Employees such as bomb threats, death threats, threats of assault, threats of violence are prohibited. Employees are prohibited from engaging with prisoners in contests like running or sprint challenges, weight lifting contests, etc. Employees shall not physically fight or assault any person on facility grounds. Employees may act to reasonably defend themselves against violence. If an Employee becomes aware of a threat of violence or an act of violence, the Employee shall immediately report this information to their supervisor/chain of command.

Employees will ensure proper storage and handling of tools, keys, equipment, and other items (e.g. metal cans, metallic items).

ACKNOWLEDGMENT

I acknowledge that I have received a copy of, have read, understand and agree to abide by the above additional conditions, including Attachment A. If I have any questions, I will ask my supervisor/manager.

Print Employee Name

Employee Signature

Date



ATTACHMENT A (Referenced in Attachment I)

ALLOWABLE ITEMS WITHOUT GATE MANIFEST

Employees are allowed to bring the following items into a facility while on duty:

1. Driver license/personal identification.
2. Pens (clear) and pencils (no more than two (2) of each).
3. Small notebook.
4. Eyeglasses, sunglasses, and glass case – soft fabric sleeve only.
5. Cash, not to exceed \$25.00.
6. Personal keys.
7. One (1) comb, one (1) brush or one (1) pick; non-metal only.
8. One (1) wallet or one purse/bag; no larger than 6" x 8".
9. Umbrella, no pointed tips, no more than 20 inches total length.
10. Feminine hygiene products; one (1) day's supply.
11. One (1) tube lip balm (e.g., Chapstick), one (1) lipstick.
12. Hand cream/lotion (4 oz. or less) tube.
13. Non-alcoholic based anti-bacterial hand cleaning sanitizer (four (4) oz. or less).
14. Sunscreen (four (4) oz. or less).
15. Over-the-counter medication; one (1) day's supply limited to pain medication (e.g. aspirin, Tylenol, Ibuprofen) and antacids (e.g. Tums, Mylanta). Over-the-counter medication containing stimulants/relaxants (e.g., NoDoz, Sleepzeze, NyQuil, Dexitrim) are prohibited. The medication must be factory sealed when brought in and be identifiable.

Note: An Administrative Manifest from the MDOC is required for prescription medication.
16. One individual box/packet (unopened) paper tissues or one handkerchief.
17. Breath mints (one (1) oz. or less), hard candy/cough drops/throat lozenges (one (1) roll or package (six (6) oz. or less) of no more than ten (10) individually wrapped items); nicotine lozenges (ten (10) or less lozenges).
18. Coffee/tea/creamer/sugar/hot chocolate/coffee filters, soup/hot cereal/powdered drink mix, as described below:
 - Coffee – One (1) factory sealed, unopened non-metallic container, single serving, sealed packets or in original packaging containing no more than two (2) pounds to be transferred to



clear plastic zip bag in presence of gate officer.

- Tea/creamers/sugar – Single serving, sealed packets or in original packaging and transferred to clear plastic zip bag in presence of gate officer.
- Hot Chocolate – Maximum of two (2) sealed packets in original packaging and transferred to clear plastic zip bag in presence of gate officer.
- Coffee Filters – Maximum of one (1) unopened sealed bag in original packaging.
- Soup/Hot Cereal/Powdered Drink Mix - Sealed packets or envelopes (no more than two (2)).

19. Pocket calendar (non-electronic).

20. Two (2) clear, sealed, unopened plastic container of water not to exceed one (1) gallon in total.

21. Contact lens case; wetting solution and/or eye drops (non-prescription) – not to exceed ½ oz.

22. Factory sealed energy/protein/granola/candy bars – two (2).

23. Flashlight (mini) and case.

24. Street shoes during inclement weather to replace snowshoes/boots – one (1) pair.

25. Any combination of two (2) whole fresh fruits daily (no watermelon, honeydew, pineapple, or cantaloupe).

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ATTACHMENT J – Reserved

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ATTACHMENT K – Reserved